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Estates & Wills & Trusts

Online will kits don't cover all the bases: Ticker

By Paul Russell, AdvocateDaily.com Contributor



People can initially save money by using an online will kit instead of going to a lawyer, but they may pay dearly for that shortcut down the road, says Toronto-area estates litigator [Charles B. Ticker](#).

“As an estate litigator, I love online wills because they bring in a lot of business when they fail,” says Ticker, who practises estates litigation — but doesn't draft wills — with [Charles B. Ticker Law Office](#).

“People think creating a will is a very simple exercise, but mistakes are often made around execution,” he says, including wills that were not signed in the presence of two witnesses, witnesses who turn out to be disqualified, or the signatures are in the wrong place on the document.

“A do-it-yourself will kit may save money now, but it can cost your estate tens of thousands of dollars in legal fees later if there's a problem with the will or its interpretation,” Ticker tells [AdvocateDaily.com](#).

He says it's ironic that people don't want to pay a lawyer to draft a will, considering it will ensure their valued assets are distributed the way they wish after death.

“People spend a fortune on cars and a house, but they don't want to spend \$500-\$1,000 on a document that protects what they have built up,” Ticker says.

He agrees that online will kits are sure to appeal to some people, particularly millennials, but Ticker cautions they are not suitable in many situations.

“This type of software serves a purpose, but it is not a panacea,” he says. “There are so many estate-planning situations where you really do need to get professionals involved.”

Ticker says these include blended families, having children from two marriages, dependents with special needs, or if business or foreign assets are involved.

“There is a high percentage of families that have some complexity in their estate planning, and they should see a professional when drawing up a will,” he says.

Noting that statistics show that half of adult Canadians don't have a will, Ticker says he can understand how online services might be able to reduce that number.

“Having a will done by a computer program is usually better than having no will at all,” he says.

Ticker says there is also a danger that online wills could be misused, giving the example of an elderly parent who has a will created for him by a younger family member using an online service.

“Maybe that document won't treat all the children equally, which could lead to a will challenge and strained relationships.”

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If drawn up in a law office, he says the lawyer will ensure the testator has a firm knowledge of what's in his estate and how he wants it divided upon his death, Ticker says.

"In a will challenge situation, the lawyer could be a professional observer and witness as to the capacity of the testator, but there is no evidence of capacity if an online service was used," he says.

Ticker says it is becoming increasingly common for traditional wills to address social media, as people are concerned about the digital footprint they are leaving behind.

"After death, sometimes it's not easy for family members to get these accounts closed because they need to have the password and the sign-in credentials," he says.

"I would hope that when you open an account on Facebook or other social media site, you would be asked who has authority to speak for you in the event of death," Ticker says. "That is an issue people have to keep in mind."

He advises people to also address in their wills what will happen to any digital currency they own, such as Bitcoin, or any loyalty points they have accumulated through credit cards or services such as Air Miles.

"Those points have real value, and people should be directing what happens to them," Ticker says. "If will software gets people thinking about those issues, that is a good thing."

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