

# Common Mistakes With DIY Estate Plans

By Gary Altman

## More and More Do-It-Yourself Wills and Trusts Available Online

Every year I feel compelled to write about why online and pre-packaged estate planning documents are a big NO-NO. Just today, I received an email regarding a program. called Trust & Will.

The internet offers all the information and tools we need to create our estate plan, right? It is as easy as replacing your garbage disposal. There is no shortage of companies and products, and now, with ChatGPT and AI, these companies promise hassle-free customizable wills at a fraction of the cost. Sure, doing it yourself gratifies you and might even save you money. I hear this conversation from the younger generations approaching middle age because they were raised with the internet and social media.

For most people, this is not true. Several years ago, Consumer Reports®, an independent nonprofit consumer watchdog group, created wills using the forms provided by DIY websites and asked three law professors to review them. Although the professors found that the wills drafted using the DIY services were better than wills drafted by non-lawyers on their own, they were inadequate to meet the needs of most consumers. Although your DIY “estate plan” may cost only \$49.95, it may be much more expensive than an estate plan designed by an experienced estate planning attorney.

**Wills are only part of a comprehensive estate plan that protects you and your family.** Even if your DIY will meet all your state’s requirements and is legally valid, the will alone is unlikely to be sufficient to address all your estate planning needs. DIY packages you can buy online that purport to be comprehensive may not include important documents you may be unaware you need. As a non-lawyer, you have not received legal training and are unlikely to know which documents you need to plan fully. This is not a criticism—an estate planning attorney doesn’t learn to fly a plane or create a delicious crème Brûlée without training and experience. Without expertise in a particular area, we don’t know what we don’t know—and this could lead to

unnecessary heartache for you or the family and loved ones you will one day leave behind.

**DIY estate plans may not conform to the applicable law.** Each state determines the law that applies to estate planning—and there can be wide variations in the law from state to state. Although the forms you can find online may claim to conform to your state’s law, this may not always be true. In addition, if you own property in another state or country, the laws in those jurisdictions may differ significantly, and your DIY estate plan may not adequately account for them. Estate laws, whether federal or state, are not written in stone. They change, expire, and sometimes go into effect retroactively. Maryland’s estate and inheritance tax laws differ from Washington, DC, and Virginia. Only a skilled estate planning attorney knowledgeable in the nuances of estate and tax laws in the state in which you reside can ensure that your assets are protected, and your wishes are honored.

**A DIY estate plan could contain inaccurate, incomplete, or contradictory information.** For example, if you create a will using an online questionnaire, you might select the wrong option or leave out important information that could prevent your will from accomplishing your goals. In addition, some online services allow users to insert additional information not addressed by their questionnaire that could contradict other parts of the will.

**Your DIY estate plan may need to account for changing life circumstances and different scenarios that could arise.** For example, if you create a will in which you leave everything to your two children, what happens if one child dies before you? Will that child’s share go to his or her sibling—or will it go to the child’s offspring? What if one of your children accumulates much debt? Is it okay with you if the money or property the indebted child inherits is vulnerable to claims of the child’s creditors? What if your will states your daughter will receive the family home as her only inheritance, but it is sold shortly before you die? Will she inherit nothing? Unlike a computer program, an experienced estate planning attorney will help you think through the potential

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changes and contingencies that could affect your estate plan and design a plan that prevents unintended results that could frustrate your estate planning goals.

### **DIYers frequently need to correct the plan.**

Under the law, certain requirements must be met for wills and other estate planning documents to be legally valid. For example, a will typically requires the signatures of two witnesses, but state law differs regarding what is necessary for a will to be validly witnessed. Some states require not only the will be signed by the creator of the will and the witnesses but also that they all must sign the will in each other's presence. In other states, witnesses need not be in the same room when the will creator signs the will; they can even sign it later if the creator tells them his or her signature is valid. Similarly, for a valid power of attorney, some states require only the signature of the principal (the person granting the power of attorney) to be notarized, but some states require the signatures of both the principal and the agent (the person who will act on behalf of the principal) to be notarized. In other states, one or more witnesses are required—and these requirements may also differ depending upon the power of attorney (financial vs. medical) you are trying to execute. If you seek the help of an estate planning attorney, the "i's" are dotted, and the "t's" are crossed, and your intentions will not be defeated because of mistakes made during the execution of your documents.

**Assets may be left out of your estate plan.** Many people do not realize that a trust is frequently a better estate planning tool than a will because it avoids expensive, time-consuming, and public court proceedings (i.e., the probate process) that would otherwise be necessary to transfer your money and property to your heirs after you pass away. Trusts are used to shield against large estate taxes. There are many types of trusts in estate planning, revocable, irrevocable, discretionary, special needs, and testamentary. Even if you have created a DIY trust, if you do not fund it and transfer the title of your money and property into the name of the trust, it will be ineffective, and your loved ones must still endure the probate process to finish what you started. Further, if you transfer the title of all your assets to the trust, you will likely acquire additional property or financial accounts over the years that must go through probate if the title is not transferred to the trust.

Regular meetings with an estate planning attorney can help ensure that your plan accomplishes your goals and that your grieving family members are not left with major headaches after you die.

### **The Bottom Line**

A DIY estate plan can lead to a false sense of security because it may not achieve what you think it does. If your DIY will is invalid, your property and money will go to heirs specified by state law—who may not be the people you would have chosen. An unfunded trust will be ineffective. Banks may not accept the generic power of attorney you found online. Laws affecting your estate plan may change. These are just some mistakes or unforeseen issues that could cost your family dearly. Such services cannot account for the plethora of related financial, tax, and personal issues that should be addressed. And they don't address the critical issue of regular review and maintenance of your estate documents throughout your life. An experienced estate planning attorney is aware of any trends in the law that could dramatically affect your estate plan and has the expertise needed to help you design and create a comprehensive plan. Call the attorneys at Altman & Associates at 301-468-3220 so we can help provide you and your family with the peace of mind that comes from knowing you have an estate plan that accomplishes your goals and will avoid unnecessary attorneys' fees, headaches, or conflict for your grieving family when you pass away. Watching a video to repair a household item is one thing, but don't take a chance playing a lawyer, even if you perceive you have negligible assets.

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