

Release date: 10 September 2015

## Will apps and digital options may create estate planning disasters

There's an app for that, or so the saying goes, but the rise of Will apps for android and iPhone, as well as the digital trend to supplement a written Will with a video recording, has the potential to create an estate planning disaster, warns Anna Hacker, National Manager Estate Planning with Equity Trustees Limited (EQT).

"Online Wills are bad enough, and people should always be wary of any service that implies drafting a Will is such a simple process that it can be done in a few minutes on the internet. But suggesting that an appropriate Will can be tapped out on your phone with a downloaded app is just too simplistic," Ms Hacker said.

"While the apps stress that the structure is legal and binding, the most important aspect of making a Will is not the document itself, but the advice that goes with it because that's what takes into account you as a person, the nuances in your personal relationships and your circumstances. With digital Wills and apps the advice step is missed – an app can't detect subtleties or be proactive in how you deal with difficulties that might need to be dealt with in a Will."

She urged those considering a Will app to look closely at the terms and conditions on the offering: "The developers of these apps are very clear that they take no responsibility for any changes in the laws or whether the Will app is appropriate to your own circumstances."

Ms Hacker also recommended against creating a digital video recording of your Will or supplementary information to go with it, particularly services that offer a video Will, and promise to provide the functionality to make changes to update the video recording as often as you like.

"If you have a written Will and supplement that with a video Will or explanatory information in a video, there can be confusion as to which is the legally binding version. If the information in both isn't identical, it may cause the written Will to be challenged – and even revoked.

"This trend devalues the estate planning process, and can create an ambiguous result that will cause your beneficiaries distress as they try to work through the aftermath of your death," she said.

Cyberspace is just the latest frontier where Wills can go wrong. A spate of recent court decisions have reinforced that many commonly held beliefs about Wills more generally, are not correct.

"While the law concerning Wills does vary from state to state there is a fairly common approach throughout the country when it comes challenging a Will. All too often some commonly held beliefs are found wanting," Ms Hacker says.

*Some of the misunderstandings about Wills include:*

### **Family executors don't get paid**

Many people still believe that a family member or friend who is appointed as an Executor of a Will cannot, or is less likely to, charge a commission. Ms Hacker says her recent experience is that family members (especially where there might be conflict) are requesting a payment for acting as executor. "Executors feel it is unfair to not be compensated, especially if matters become complicated," she said.

## **Beneficiaries cannot challenge a will**

It is widely believed that if a beneficiary is given a nominal bequest they cannot challenge a Will. But, said Ms Hacker: "You can't contract out of an estate challenge, and you can't give someone a small bequest to prevent them from challenging a Will. What these small bequests can mean is that someone who feels they have an entitlement to more starts out at \$X instead of \$0 when they challenge, so it almost gives them a foot in the door."

## **Giving reasons in a Will prevents challenges**

Putting reasons for an omission of a beneficiary into a Will does not prevent challenges. In fact, Ms Hacker said it can spark a challenge if someone feels a slight has been made public. "I would really question including reasons for omission in the Will. It is better to put them into a separate letter that can be used if and when necessary."

## **Government gets it all if there is no Will**

Ms Hacker is constantly surprised at the number of people who believe that if someone does not have a Will, all their estate goes to the Government. "In reality the legal position is that an administrator has to work through all levels of relatives, including those that are distant, before the Government will get the estate proceeds." The level of relatives who are eligible to inherit varies from state to state.

## **The estate pays for challenges**

Another common misconception is that if you challenge an estate, the estate will cover the costs. "This is not always true and in fact courts can order parties who fail in their challenge to pay costs for the estate as well as themselves."

Ms Hacker said the number of myths about Wills seem to be on the increase.

"This has not only added to the number of misunderstandings surrounding Wills and estate planning, but has also discouraged appropriate consideration of how Wills should be properly drafted and what else might be needed in estate planning.

"One of the main ones I find is the one that leads many Australians, even those with valuable assets, to believe they only need a simple Will as their circumstances are straightforward.

"It is probably this belief which has contributed to the increase in interest in digital options and Will apps.

"Our society is more complex; relationships, families, how we earn our incomes – all these have also changed. Most people's circumstances are not as straightforward as they think," Ms Hacker concluded.

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