



# The Horrors of Home Made Wills

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Deborah O'Dell was a nurse (so she should have had the learning that rejected home made remedies over professional assistance).



She died with assets in excess of half a million dollars (so it seems that she would have been able to afford proper legal advice). She had two children, a son Michael and a daughter Melissa, and 2 grandchildren (so she had good reasons for caring about the destination of her assets on death). In other words, she should have known better than attempt home made wills.

Yet between January 2005 and about February 2008 she once attempted to make, and twice attempted to change, a home made will. She died on 28 November 2008. On 25 June 2010 the Supreme Court decided that all her efforts had failed.

## Problems with the will form

Deborah was given a will form by a funeral director when she made a funeral plan. She filled it in by hand. It had these possible problems:

1. Deborah didn't sign before two witnesses – she signed before one person and a second person later added her name as a witness.

2. The completed will form purported to give away her superannuation as part of her residual estate (a proposition inconsistent with court decisions since at least 1981).

## Problems with the first alterations

After the birth of her second grandchild, Deborah changed the will, by handwritten additions to the handwritten holograph. Those alterations created these potential problems:



3. The changes were not signed, initialed or witnessed,
4. An alteration provided that “money to be given evenly to LJOD, DJOD & invested till age 25”. There was no amount specified as “money”. LJOD and DJOD were not defined but were presumably her grandchildren.
5. To a gift “of money: from Life Insurance” was added “\$100,000 – put any extra” but nothing indicated the beneficiary of that gift or the meaning of “extra”.

## Problems with the second alterations

About nine months before her death, Deborah made further changes. These changes contained further problems:



6. The changes were not signed, initialed or witnessed.
7. After the reference to the house “*NOT TO BE SOLD*”, Deborah wrote “If *sold* invest money either of the kids – Mick, Mel can live in”!



8. Deborah added a gift: “Any – Super – other – finance & pay any debts”. What did this mean?
9. She added to the gifts from the life insurance: “DJO \$50,000.00 Mick”, but there was nothing to indicate its meaning.
10. In a gift of the remainder of the estate, Deborah made the changes in italics: “As to 1/3<sup>rd</sup> *DOD Mick* % to son – MJ O’Dell Decoda Jay O’Dell”. There was nothing to indicate the meaning of this change.

## Confused?

Believe it or not, I’ve attempted to simplify the issues that can be identified from the decision. Thankfully for the parties, because of the outcome of the proceedings, most of the issues didn’t need to be resolved.

## Outcome

The judge in the Supreme Court made these findings:

- O1 the deceased intended the will form, without alterations, to constitute her will. This allowed for a dispensation from the formal requirement of two witnesses.
- O2 the deceased did not intend either of the alterations to constitute her will.
- O3 because the alterations showed the deceased’s dissatisfaction with the original, unaltered will form, the alterations constituted a full revocation of the will contained in the will form.

- O4 Deborah O’Dell died intestate, ie without a valid will.



## Conclusion

The decision of *In the Estate of O’Dell* [2010] NSWSC 678 is an illustration of the difficulties and likely ineffectiveness (or reduced effectiveness) of home made wills. It is not an isolated instance.

## It could have been worse

The case of *O’Dell* doesn’t highlight all the pitfalls of home made wills. More pitfalls would have been apparent if the will form and alterations *had* constituted Deborah O’Dell’s will. If that had happened, all the vague, inconsistent and meaningless provisions would have required construction. The full litany of problems with home made wills may then have been apparent.

## An aside

When I read that the funeral director provided the will kit to Deborah O’Dell as a free give-away with a funeral plan I couldn’t help think that they had some responsibility for the final outcome. I wonder if those who missed out on an inheritance from Deborah O’Dell’s estate have thought similarly? Or, if regard is had to the appraisal of will kits contained in the April 2010 edition of *Choice*, perhaps the publishers of the will kit have some responsibility for the difficulties that befell Deborah O’Dell’s intended beneficiaries.

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