

## Divorce and your Will

A Will is almost entirely and automatically revoked if you marry or enter into a civil partnership and, if you are going through a divorce or separation, you need to plan by reviewing your existing Will or in making one for the first time. Decrees of judicial separation have no effect in relation to gifts under a Will.

In particular, the appointment of a former spouse or civil partner as an Executor is automatically revoked by divorce and 'Will gifts' to a former spouse or civil partner will be ignored. Whilst this is often the desired intention, it is best to review your Will and address any other changes such as the appointment of different guardians (although when you divorce each of you will continue to have parental responsibility, even if your child lives with the other parent or there is a residence or contact order in place) and, perhaps, to altogether remove the gift to the spouse or civil partner. If you have a Power of Attorney, you should also consider removing your former spouse or civil partner and appointing a new one.

Although it can take months or years for a divorce to go through, to ensure that your assets will pass as you want them to it is best to review or write your Will at the early stages of divorce proceedings. Don't worry if you're soon to enter into a new relationship, as there is an exception to the automatic revocation of a Will by marriage or entering into a civil partnership, in that if the Will is re-signed in advance and 'in contemplation' of the marriage or civil partnership, then it will not be revoked when do eventually formalise things, but it is vital to ensure that this is correctly worded. If you are only cohabiting, then you must make a Will if you want them to benefit, as the intestacy rules do not provide for them in the same way as a spouse or civil partner. Please note that if your former spouse was the only beneficiary under your Will, then following your divorce your estate will be distributed in accordance with the intestacy rules, which may or may not be what you want.

From time-to-time, a party dies before the divorce is made absolute which often causes undesirable outcomes. You should please be aware that until the divorce decree is made absolute, a spouse or civil partner remains as such and, therefore, if you die before the divorce is finalised and have made a Will providing for your spouse or civil partner, he or she will still inherit your estate. If you die mid-divorce leaving no Will, the rules of intestacy will make provision for the spouse or civil partner.

Where there is a second marriage, it is important to distinguish between tax considerations and the interest of the family overall. Usually, each party has assets derived from a previous relationship as well as obligations to the children of former marriages. In such situations, it is crucial that Wills are updated to take account of changing circumstances and to offer some protection for children from earlier marriages / relationships.

### What happens to the family home?

Most couples own their house as 'joint tenants', which means that on the death of the first of you to die it will pass automatically outside of the terms of your Will to your surviving spouse/former spouse. If you do not want this to happen, then you can change the ownership of the property so that you both own it as 'tenants in common' so that your share passes to the beneficiaries named under your Will.

### Claims under the Inheritance (Provisions for Family and Dependents) Act 1975

You can leave your estate to whomsoever you wish. However, the above Act provides that certain categories of people can bring a claim against your estate if they feel that reasonable financial provision has not been made for them. The people who are able to bring a claim include: -

- a spouse (including a judicially separated spouse)
- a former spouse who has not remarried (provided no order has been made barring them from bringing a claim in the divorce order). Please note that orders for financial provision in favour of a former spouse are rare as the court has wide powers to make capital adjustments between spouses by way of ancillary relief in the divorce proceedings
- a person who during the whole of the period of two years ending immediately before the death lived in the same household as the deceased as husband and wife
- any person maintained by the deceased immediately before his/her death.

However, there are ways in which appropriate provision can be made.