

## Divorce and your Will

When going through a divorce or separation, you need to review your existing Will (or if you haven't already, make one for the first time).

### What will happen to your existing Will on divorce?

Unlike when you get married, on divorce your Will is not revoked. That said, your ex-spouse will be revoked from certain parts of your Will.

1. If your former spouse is named as Executor
  - The appointment of your former spouse as an Executor will be automatically revoked by divorce.
  - This is often the desired intention, and any other named Executors or reserve Executors would act. If, however, you have not named other Executors, it is important you review your Will to appoint someone new.
2. If you leave a gift to your former spouse
  - Any gifts to your former spouse will be automatically revoked. On death, if this Will was still in place, it would be treated as though your former spouse had predeceased you and whoever was named to receive these in this event would become the beneficiary.
3. If you chose guardians together
  - If anything happened to you and your spouse has parental responsibility, then they would automatically become the guardian to your children. However, you may wish to review the guardians you have appointed for if they are unable to be guardian or they don't have parental responsibility
4. If your former spouse was your only beneficiary
  - Following your divorce your estate will be distributed in accordance with the intestacy rules, which may or may not be what you want.

### 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.

### At what stage should I review my Will?

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.

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.

Decrees of judicial separation have no effect in relation to gifts under a Will.

### What will happen to your Power of Attorney?

If you have a Power of Attorney, you should also consider removing your former spouse or civil partner and appointing a new one.

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### **What if you have a new partner?**

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 you 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 your cohabitee to benefit, as the intestacy rules do not provide for them in the same way as a 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.

### **Claims under the Inheritance (Provisions for Family and Dependants) 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. As well as children, some of 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.

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