

Divorce and Your Will

Until you receive your decree absolute your spouse could still receive your estate if you die. Even if you are separated or even if a decree nisi has been issued your estranged spouse may still benefit.

- Without a Will your estate will be distributed on your death under rules laid down in the Administration of Estates Act commonly known as the 'Intestacy Rules'. If you die leaving a surviving spouse and children then your estate (apart from jointly owned property which may be treated differently) will be distributed so that your surviving spouse becomes entitled to your belongings and the first £250,000 of your estate. Of the balance, one half will be held for the children on attaining the age of 18, and your spouse will be entitled to the income from the other half for his or her life. On the surviving spouse's death that other half will be distributed to the children. You could draft a Will leaving your entire estate to your children.
- Without a Will if there were no surviving children then the surviving spouse is entitled to the personal belongings and the first £450,000 of the deceased's estate. Other relatives of the deceased (such as brothers and sisters) would be entitled to a share of the balance. You could leave your entire estate to family members, friends, or charities by executing a Will.
- Jointly owned property will pass to the survivor so if you have a joint bank account with a surviving spouse the account would pass to them automatically on death. Your property will also pass to them automatically on death if it is held jointly as what is known as 'joint tenants'. It is relatively easy to ensure that your share of the property passes under your Will by serving notice on the other joint owner. This of course needs to be considered with your divorce solicitor especially if you are arguing you own more than half of the property.
- Once your divorce has been finalised and your decree absolute has been received, the effect on a Will is as if the former spouse had died. This means the former spouse will no longer be able to benefit at all from your old Will. However, this may cause a partial intestacy of your Will or mean your estate passes to default beneficiaries.
- If you die during the course of your divorce, the divorce proceedings come to an end. However, your spouse may be able to bring a claim against your estate regardless of the provisions of your Will. It is fairly common to bar claims against the estate in the final agreement.
- If you have already met someone else, without provision in a Will a co-habitee has no entitlement to your estate (apart from jointly owned property which may be treated differently) and could be faced at a time of considerable distress with having to bring costly proceedings in Court to claim against the estate.
- If you have infant children you can appoint guardians in your Will to look after their affairs until they are adults. If you were formerly married to their surviving parent they will have parental responsibility for their children but you should consider appointing guardians in case

they die before you. Even if your former spouse becomes their legal guardian you can appoint executors and trustees to look after your children's inheritance until they reach eighteen or older if you wish to ensure it is only used for their benefit.

- If you have children from previous relationships or if you have children with someone to whom you were not legally married their other parent may not have automatic parental responsibility for them and you should consider whether you want to appoint their other parent or someone else as their guardian.
- All references to marriage also apply where there is a civil partnership, references to divorce also apply to the ending of a civil partnership, and references to spouse can also apply to civil partner.

If any of these circumstances apply to you then you should make a Will. This can cost as little as £350 plus VAT. Please contact any of the following to arrange an appointment and request a Wills Questionnaire.

For more information please contact:

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October 2009