



## WILL MAKING FOR DIVORCED AND SEPARATED PEOPLE

### When you are Still Married and Separating

When a marriage or relationship breaks up, you have plenty on your mind. What would happen if you died is probably something you don't want to think about, but a few minutes' attention now could save more heartache later on.

A separation has no effect on a Will - so your husband or wife could still inherit under your Will, no matter how long you have been apart. If you had no Will, he or she would still inherit from you under the **Intestacy Rules**. The Rules say that if someone dies - let us say they were married with children - and what they leave (his or her "estate") is worth less than £250,000, the husband or wife takes everything, including the deceased's personal possessions. If the estate is worth more than that, the spouse gets £250,000 (and the personal possessions) and shares anything over £250,000 with the children. If there are no children, the spouse takes the estate.

If you have started another relationship after parting from your spouse, you may want to think about making a Will providing for your new responsibilities. A partner to whom you are not married cannot inherit from you unless you make a Will providing for him or her, and they may have to go to court to get provision from your estate.

Concerning children, your own children can always inherit from you, but stepchildren and an unmarried partner's children can only inherit from you if you adopt them, if you make a Will mentioning them or there is a determination by the Court in an Application under Inheritance (Provision for Family and Dependants) Act 1975.

If you have received the final papers, your Decree Absolute, financial matters have probably been settled between you and your former spouse in a Financial Remedy Final Order. You may feel you now have very little money left to leave but, particularly if you have children, matters can still be complicated.

### Effect of Judicial Separation

If you are "Judicially Separated" which is an Order of the Court rather than living apart or a Separation Agreement, this has an effect on your Will and the Intestacy Rules.

If you are judicially separated and die intestate, with no Will, then provided you are still separated the assets of the deceased will be distributed as through the other spouse had already died. S.17 and S.18 Matrimonial Causes Act 1973.

If a judicially separated spouse dies and they have a Will, the judicial separation does not affect the provision under the Will. It is important to make a new Will

## Effect of Divorce

If you have made a Will before your divorce your Will is still valid, but this creates a number of problems. Many married couples appoint each other as executor and leave their estates to each other, either alone or to share with the children. Divorce cancels the former spouse's appointment as executor and all gifts to him or her in the Will, although other gifts remain valid. If the spouse was given the larger part of the estate, this means that, after divorce, there is no one to inherit this property and the Intestacy Rules will apply. So a divorced person with children would find that his or her estate would go to their children. However, should that person and his or her children die together - say in a car crash - the estate would go to the children's next of kin - probably the former spouse. This may or may not be what you would wish.

If you do not have children, your parents or brothers or sisters could be given your property. This may suit you, but if you have a new partner, and perhaps a new family, they may not be properly provided for. So it is important to make an up-to-date Will providing for your changed circumstances.

## Appointing a Testamentary Guardian

If you have separated or divorced it may be particularly important for you to appoint a Guardian. It is essential for all parents to ensure that there is someone to take care of their children in their place. Usually the appointment of a Guardian will not take effect where there is a surviving parent, but where, following divorce proceedings, a Residence Order has been made in favour of the parent appointing the Guardian, the appointment will take effect on that parent's death.

## Effect of Remarriage

If you make a Will and then marry, the Will is revoked by the marriage unless you have made a Will in Contemplation of that marriage.

## Other Reasons to Make a Will

- You can appoint executors to take charge of your affairs.
- You can leave a gift to charity or a keepsake to a friend.
- You may be able to save tax.
- You will get unbiased independent advice from your solicitor with the opportunity of reviewing your situation.

Whenever there is family change, your Will should be reviewed, including: Cohabitation, Marriage, Separation, Divorce, Births, Deaths, Inheritance or any change in financial circumstances.

If you would like to understand how your personal circumstances apply to the law, consider practical issues, your options for managing family change and planning for the future; please contact us by telephone to arrange an appointment or by email [FamilyTeam@srb.co.uk](mailto:FamilyTeam@srb.co.uk)

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