

WILL MAKING FOR DIVORCED AND SEPARATED PEOPLE

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

“I’m not divorced, but I have left my husband”

“My wife walked out on me”

These are very difficult situations. You are still legally married, however bad your relationship. 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 could still inherit from you under the **Intestacy Rules**. The rules state that if someone dies – let us say they were married with children – and what they leave (his or her “estate”) is worth less than £125,000, the husband or wife takes everything, including the deceased person’s possessions. If the estate is worth more than that, the spouse gets £125,000 (and the personal possessions) and shares anything over £125,000 with the children. If there are no children, the spouse takes the first £200,000 of the estate (including the personal possessions) and will share anything over that with the deceased’s parents, or brothers or sisters or their children.

If you started another relationship after parting from your spouse, you may want to think about making a Will providing for 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 may have to go to court to get provision from your estate.

As far as children are concerned, your own children can always inherit from you, but step children and an unmarried partner’s children can only inherit from you if you adopt them or if you make a Will mentioning them.

“I am divorced – suppose I get run over tomorrow”

If you have received the final papers (your decree absolute) financial matters have probably been settled between you and your former spouse. You may feel you now have very little money to leave but, particularly if you have children, matters can still be complicated.

If you have 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 estate to each other, either alone or to share with their children. Divorce cancels the former spouse's appointment as executor and 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 (explained briefly above) 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.

Even if this does not happen and the estate does go to the children, if they are under age the former spouse would have to take control of everything on their behalf.

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. Although the appointment of a Guardian may not take effect where there is a surviving parent, it is still worth appointing one so that your wishes are embodied in a valid legal document.

Is there any other reason to make a Will?

There are plenty of reasons, apart from providing for your responsibilities, why you should have a Will. Here are some:

- You can choose who will be in charge of winding up your affairs (your executors); otherwise your nearest relative will be given the task. This may be fine but you may prefer a friend or family member, alone or with a solicitor, to do this.

If you do not make a Will, you cannot give your executors special rights to deal with your estate, such as authority to buy a house for your family to live in. Parliament only gives limited powers and making a Will would enable you to give additional powers to your executors and ensure that as much as possible of your estate goes to your family when it is needed, and that your executors can deal with your estate as economically and efficiently as possible.

- If you do not make a Will you cannot leave a gift to charity. Many people wish to leave a legacy to a charity they have supported all their lives. Alternatively, people sometimes leave their estate to charity as a long stop, with a charity inheriting the estate if everyone else mentioned in their Will has died, for example.
- If you do not make a Will, you cannot leave a keepsake to a friend.
- If you do not make a Will, you may pay more inheritance tax than is necessary.

So add another item to the list of things to be done and do it as soon as possible.

If you feel you would like to discuss this further then please talk to:

Jean Newton on 01905 726789 who would be pleased to help.

email: jn@parkinsonght.co.uk

Worcester Office

Haswell House
St Nicholas Street
Worcester
WR1 1UN

worcester@parkinsonwright.co.uk

Droitwich Office

64 Friar Street
Droitwich Spa
Worcestershire
WR9 8EF

droitwich@parkinsonwright.co.uk

Evesham

4 Abbey Lane Court
Abbey Lane
Evesham, Worcestershire
WR11 4BY

evesham@parkinsonwright.co.uk