

A Guide to

Wills following a Divorce or Separation

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- Understand why it may be necessary to review or create a new Will.
- Understand how to protect your children.
- Understand the other considerations necessary when making a new Will.

Section

1

This Guide has been designed to assist you with some of the general issues and to answer questions that you may have. This Guide is only intended to be a general overview of the law in relation to Wills following divorce or separation and legal advice should always be obtained from Leonard Gray in application to a particular case.

Breakdown of a Relationship

This Section of the Guide explores why it may be necessary to review or create a new Will following the breakdown of a relationship.

When a marriage or relationship breaks up, this will inevitably be a difficult time and you will have plenty on your mind. What would happen if you died is probably something you don't want to think about, but it is imperative that you do consider these matter to save further problems for your loved ones in the future.

1. The effect of separation

Separation can take many forms such as one spouse walking out on another. These are very difficult situations and it is important to remember from a legal stance you are still legally married, however bad your relationship.

A separation has no effect on a Will so your spouse could still inherit under your Will, no matter how long you have been apart. A fresh Will reflecting your situation should, therefore, always be considered.

If you had no Will, your spouse would still inherit from you under the Intestacy Rules. The way your estate will pass in the absence of a Will is dictated by the Intestacy Rules. How these Rules would affect you depend on your own family circumstances but the following examples give some insight into this:

- If you are married without children then all of your estate and all of your personal chattels will pass to your spouse.



- If you are married with children then the first £250,000 of your estate and all of your personal chattels will pass immediately to your spouse. The rest of your residuary estate will be divided into 2 equal parts. One half will pass to your spouse and the other half will be held for your children in equal shares until they attain the age of 18 years.

If you started another relationship after parting from your spouse, you should 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 may have to go to Court to get provision from your estate.

2. The effect of divorce

If you have received the final papers (your Decree Absolute) financial matters have probably been settled between you and your former spouse. Regarding your estate, matters can still be complicated and do need careful consideration.

If you made a Will before your divorce your Will is still valid and this creates a number of problems.

Many married couples appoint each other as the executors and beneficiaries of a Will, either alone or to share with the children. Divorce has the effect of removing the former spouse from the Will completely, although the appointment of other executors and beneficiaries remain valid.

If the former spouse was given the larger part, or indeed all, of the estate and no substitute provisions are made in the Will for their absence, then this means that, after divorce, there is no one to inherit this property. In this instance, the Intestacy Rules (as explained above) will apply to the assets remaining. The examples of how this would work in reality are as follows:

- A divorced person with children would find that his or her estate would go to their children. However, should that divorced person and his or her children die together, for example in a car accident, then the estate would go to the divorced person's parents or, if not alive, brothers and sisters (or their children) of the



divorced person. If the divorced person was an only child or has no parents/siblings/nieces or nephews surviving them then it would be grandparents or aunts/uncles (or their children) who would be entitled. This is unlikely to be what you would want and it is important to make an up to date Will providing for this scenario.

- A divorced person without children would find that his or her estate would go to their parents or brothers or sisters as discussed above. This may suit you, but if you have a new partner and perhaps a new family, they may not be properly provided for. Again, it is important to make an up to date Will providing for your changed circumstances.

3. Children

- **As Beneficiaries**

As far as children are concerned, 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 or if you make a Will specifically mentioning them.

- **Guardianship**

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.

4. Other considerations regarding making a new Will



- You can appoint executors you wish to be in charge of winding up your affairs, otherwise your nearest relative will be given this task. This may be fine but you may prefer a friend, alone or with a solicitor, to do this.
- If you don't make a Will, you can't give your executors special rights to deal with your estate, such as authority to buy a house for your family to live in. They may also be hampered in the efficient winding up of your affairs by the limited powers Parliament gives to the next of kin in these circumstances.
- Making a Will, which includes the necessary additional powers for executors, can help 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 don't make a Will you can't leave a gift to charity. Many people want 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 the charity inheriting the estate if everyone else mentioned in the Will has died, for example.
- If you don't make a Will, you can't leave a keepsake or a personal item to a friend.
- If you don't make a Will, you may pay more Inheritance Tax than is necessary.

The next Section of this Guide will look at how to make an appointment.

Section

2

Making an Appointment

If you would like to discuss the issues raised in this Guide further then please contact **Sarah Orrell**, **Louise Minifie** or **Devon McNamara** who will be happy to do so.

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We are based in Chelmsford town centre, a two minute walk from Chelmsford Rail Station with car parking and disabled access at the rear of our office for the use of clients.

Open Monday to Friday, 9:00am to 5:30pm.

Alternative times by arrangement.

Other available Guides from Leonard Gray:

- **A Guide to Divorce – Obtaining a Divorce**
- **A Guide to Divorce – Obtaining Financial Orders**
- **A Guide to Children – Advice for Parents**
- **A Guide to Children - Children and the Courts**
- **A Guide to Cohabitation**

