

## THE NEED TO INVOKE A NEW WILL WHEN YOU SEPARATE

When a marriage has come to an end the emotional toll of dealing with the legal and personal implications of such separation can often cause simple matters to be overlooked.

One such important matter, which is often not considered by separating couples is the need for them to create a new Will, whether there is a previous Will or not, and if applicable revoke any appointment of their spouse as Power of Attorney. This will need to be done when separated and subsequently re-done after any Divorce Order is granted. This may seem to be tedious, however, the implications of not completing this process will be further explored.

While a Divorce Order has the effect of revoking a previous Will (whether pre or post separation Will) and has an effect on your beneficiaries under the laws of intestacy, separation does not have this same effect. In this situation the provisions of your Will, which would most commonly leave your entire estate, or at least a significant portion of your estate, to your spouse remain valid. Similarly, the laws of intestacy would see your estranged spouse significantly inherit under your estate. It is unlikely that separated spouses would wish this situation to occur and therefore action should be taking by separated couples to protect assets and intended beneficiaries should they die.

In this situation the detrimental effect of not acting and creating a new Will after separation can be realised. By way of an example consider a situation where a couple in their mid-fifties separate after a long duration marriage. The parties formally settle their financial relationship at the time of separation and go their separate ways. However, they have overlooked the mutual Wills they had drawn up early on in their marriage, which provides for the surviving spouse to inherit the entire estate of the other upon their death. In this example assume neither party has an interest in remarrying, so they do not bother seeking a divorce order.

When the Wife suddenly passes away some 10 years later, her valid Will is located and the husband inherits her entire estate under the provisions of her previous Will, the implications of this scenario are even greater when you consider slight changes in factual analysis, such as if the husband has re-partnered and the adult children of the marriage have little to do with the father. This could be easily avoided by the parties having drafted new Wills at the time of separation, which adequately reflect their testamentary intentions.

This is merely one example of what could transpire in this situation; however, every relationship is different and will have with it its own unique circumstances. The legal implications of not creating a new Will, are far more wide-ranging and detrimental than can be outlined in this article and will depend entirely on the factual situation of your own relationship.

If you are separated and require some legal advice with regards to your family law matter and/or drafting a Will, we suggest you seek legal advice to further discuss your situation. Please feel free to contact our office on 8555 3895 to make an appointment to see a lawyer.

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