



What is the effect of marriage, separation or divorce on your Will?

Author: [Kerry-Ann Smith](#)

Email: kerryann@smithfamilylaw.com.au

Date: Monday July 11, 2022

Marriage, separation and divorce can have repercussions that extend far beyond parenting and property disputes and can have a significant impact on what happens to your estate following your death. It is particularly common for married couples to appoint each other as both the executor and beneficiary of their estate in their Wills. As such, if you have recently experienced a separation or divorce, are considering marriage or have re-married, it is important to consider the implications that these changes in circumstances will have on your Will.

What are the effects of marriage on a Will in Victoria?

When you become legally married, any pre-existing Wills are automatically revoked (cancelled). This means that all other Wills that exist are invalid unless there is a clause in the Will that provides that the Will was made in contemplation of the marriage.

If upon your death, you do not have a valid Will, you will die intestate, and your estate will be distributed according to the rules of intestacy.

What happens if you die intestate?

In Victoria, if you die intestate (without a valid Will), your estate will be distributed according to the rules outlined in the *Administration and Probate Act 1958* (Vic).

In such cases, an application for a [Grant of Letters of Administration](#) will need to be made to the Supreme Court. Usually, it is the deceased's next of kin who will need to apply for this, such as a spouse, domestic partner or child. Alternatively, the family of a

deceased person can request for the estate to be administered by State Trustees.

How is your estate distributed if you die intestate?

If you die intestate in Victoria, the rules of intestacy provide that:

- if you leave behind a partner (husband, wife or de facto) and your estate is worth approximately \$500,000 or less, all of your estate will go to them. Where your estate is worth more than approximately \$500,000, and you have children from a previous relationship, then a share of the estate will also go to those children.

- if you die leaving children but no partner, your estate will be distributed to your children equally.

- if you die leaving behind no partner or children, your estate will be distributed to your relatives in this order:

1. parents;

2. siblings;

3. grandparents;

4. aunts and uncles;

- if you had multiple partners during your life, then more complex rules of inheritance apply.

- your estate will only pass to the government if you have no living relatives.

- although the laws in Victoria aim to make the distribution of an estate as fair and sensible as possible, if you die without a valid Will, it means that your estate may not be distributed according to your wishes.

Contact our estate planning team, if you'd like to arrange for your Will and other estate planning documents to be prepared.

What are the effects of separation on a Will?

Separation from your partner does not have any effect on a Will.

This means that if you do not update your Will post-separation, your Will remains valid and your former spouse will be entitled to inherit any property left to them, regardless of whether you are in the process of, or have finalised any [property settlement](#).

Moreover, if they are named as executor of your estate, they are entitled to act in this role and manage the administration of your state, despite being separated from you.

Therefore, if you are going through separation, it is crucially important that you seek legal advice and review and update your Will as soon as possible after separation. If you do not, this can have significant repercussions on the distribution of your estate and your wishes may not be accurately reflected.

If you are separated and die without leaving a valid Will, the laws of intestacy will apply (see above). That is, your spouse will receive your entire estate if you have no children from a previous relationship. If you die leaving children from a previous relationship, your spouse will still receive most of your estate. This will be the case even if you are separated, though not formally divorced. It is therefore also important to make a Will after separation if you have no Will, to ensure your wishes are carried out in

the event of your death.

What are the effects of divorce on a Will?

Unlike separation, divorce **does** affect your Will.

In Victoria, the *Wills Act 1997* (Vic) provides that once you are divorced, any part of your Will that mentions your former spouse will be revoked, unless there is something in your Will which demonstrates that you did not intend for this to be the case.

How a Wills and Estates lawyer can help

We are able to assist you to obtain a Grant of Probate or Letters of Administration following the death of a loved one, or in advising you about bringing a family provision claim if your loved one failed to update their Will following their marriage or separation.

Contacting Smith Family Law

[03 8625 8957](tel:0386258957)

info@smithfamilylaw.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.