

Article

Family Law



4 Things to Know About Separation/Divorce and Wills

By Joanne Cliff

It's understandable that when you are focusing on sorting out a property settlement with your former spouse or partner, your attention may not turn to how and in what way the separation and settlement may impact your Will. However, there are good reasons for reviewing your existing Will or making a new one.

1. Whether you are married or in a de facto relationship (or if your relationship is registered under the Registered Relationship Act SA), the Will is valid even if you have separated. So, if you die while separated and your former spouse or partner is the executor, then that person is entitled to take up that role and carry out the instructions in the Will. If they are a beneficiary, they inherit the property (which may include superannuation) left to them in the Will. In these circumstances, you should consider making a new Will and appointing a different executor and beneficiaries.
2. The situation is different if you divorce or have a registered relationship. Under South Australian law, a divorce will revoke clauses appointing your former spouse as an executor and beneficiary. However, you should consider making a new Will after divorce to ensure that the Will appoints a new executor and new beneficiaries.
3. Even if you are divorced and make a new Will, you should take note of South Australian inheritance law, which adds a layer of complexity. A spouse, former spouse or a de facto partner can bring a claim against your estate if they have been left out of the Will. To be successful with the claim, that person has to establish that they have been left without adequate provision for their proper maintenance, education or advancement in life. If a property settlement has occurred, it would be more difficult to establish the need for financial assistance.
4. The situation is more complex if you have no Will when you die and are separated. If you have no Will and no children, then your former partner is entitled to the whole of your estate. If there is a child or children, your former partner may receive the first \$100,000 of your estate.



[MORE INFO](#)

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