

Newsletter - March 2015

Divorce and how it affects your Will

When a “decree absolute” (a court order which finalises a divorce) is made or, in the case of a civil partnership, a “decree of dissolution” (a court order which brings a civil partnership to an end) is made, any provisions contained in a will which benefit the ex-spouse or ex-civil partner are automatically revoked.

What is the consequence of any such provisions being revoked?

For all intents and purposes your ex-spouse or ex-civil partner will be treated as if they are dead. Your ex-spouse or ex-civil partner will not, therefore, inherit your estate once a decree absolute or a decree of dissolution has been made.

Who will inherit my estate in such circumstances?

If in your will you specified beneficiaries other than your ex-spouse or ex-civil partner then your estate will pass to such beneficiaries in accordance with the terms of your will.

If your ex-spouse or ex-civil partner was the only beneficiary named in your will your estate will be distributed in accordance with the rules of intestacy. The rules of intestacy may result in your estate being distributed other than in accordance with your wishes.

If your ex-spouse or ex-civil partner is named as the sole or main beneficiary in your will it is generally a good idea to prepare a fresh will once a decree absolute or a decree of dissolution has been made.

Who will inherit my estate in the period between separation and the decree absolute or the decree of dissolution?

Since any provisions are only revoked upon the granting of a decree absolute or a decree of dissolution during the period leading up to that point any gifts set out in your will to your ex-spouse or ex-civil partner will take effect.

As most people will not want an ex-spouse or ex-civil partner to benefit under the terms of their will it may be sensible to prepare a fresh will upon separation, particularly if you are in ill-health.

Any right your ex-spouse or ex-civil partner may have to maintenance or to periodic payments will remain irrespective as to the contents of your new will.

In my will I appointed by ex-spouse or ex-civil partner as my executor. Will their appointment still take effect?

Once a decree absolute or a decree of dissolution has been made any provision contained in a will appointing the ex-spouse or ex-civil partner as an executor will be automatically be revoked. Similarly any provision appointing them as a trustee will also be revoked.

If your ex-spouse or ex-civil partner was the only executor named in your will, the Court will appoint someone (normally a close family member) to administrate your estate.