



Your Will and the effect of separation, divorce and marriage

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It is very important to keep your Will up to date to reflect changes in your personal and family circumstances, particularly in the event of separation from your partner, marriage or divorce.

This article relates to Wills in Western Australia. The effect of separation, marriage or divorce on the validity of your Will in other Australian states or territories may differ.

Your Will and Marriage

In WA, under the *Wills Act 1970 (WA)*, marriage cancels your Will unless it was made in contemplation of your marriage. This means a Will made before marriage will be automatically cancelled unless the Will includes an express statement that the Will is made in contemplation of marriage.

Your Will and Divorce

Under the *Wills Act 1970 (WA)*, a divorce order made after 9 February 2009 will invalidate your Will subject to key exceptions.

In most situations, your Will becomes invalid after you and your spouse divorce unless an express statement is included in your Will that it is made in contemplation of divorce from your spouse.

Your Will and Separation

It is common practice for spouses to appoint each other as executor/executrix of their Will and one of the main beneficiaries of their estate. As executor/executrix of an estate, you are responsible for handling the administration and distribution of the deceased's

estate according to their final Will.

Importantly, [during the period from when you and your spouse separate](#) until the date the divorce order is made, your Will remains valid. In some cases, spouses remain separated for a number of years before they seek a divorce order, in which case, without an updated Will, their previous one will be valid.

It is very important that after you have separated from your partner, you update your Will to reflect your new circumstances.

If you pass away before your divorce is finalised and your existing Will is valid (or you don't have a will), your spouse will be entitled to a portion of your estate.

Depending whether you and your spouse own property together and what form of ownership (either as joint proprietors or as tenants in common), there will be implications on whether or not that property will form part of your estate that can be gifted in your Will.

To avoid these outcomes, we suggest revisiting your Will frequently and particularly when your family and relationship circumstances change.

If you have recently separated, please [contact the Meillon and Bright team](#) to discuss your family law and estate planning needs.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.