

# Marriage, separation and divorce – family law and wills implications

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outlined in the Administration and Probate Act 1958 (Vic). This may not always reflect your wishes.

your current circumstances and wishes.

**Getting married and separating are life events that have a significant effect, from the emotional impact to the practical changes in how we go about our lives.**

There are also legal effects and it is important to be aware of the impact these life events have from a family law perspective and for your will and estate planning.

**Marriage and your will**

There can be a lot to do in the lead up to wedding day. One item to add to your check list is to update, or put in place, a will.

In Victoria, if you have a pre-existing Will and then become legally married, then your Will is automatically revoked unless there is a specific clause in the Will that states the Will was made in contemplation of the marriage.

If you marry and do not have a valid Will in place, you die "intestate" and your estate is then distributed in accordance with the rules of intestacy,

**Separation and your will**

In Victoria, separating without obtaining a divorce does not have any effect on your Will. Your Will remains valid and if your spouse is a beneficiary under your Will, they will still receive any entitlement provided for them under your Will. This is regardless of if you are in the process of, or have finalised, any family law property settlement.

Similarly, if your spouse is the executor of your estate, they are entitled to act in this role and manage the administration of your estate, even if you have separated.

If you are separated and die without a valid Will, you die intestate and, as indicated above, your estate is distributed in accordance with rules of intestacy.

There can be significant implications for how your estate is distributed if you do not update or put in place a Will after separation. It is important to get legal advice and review your Will as soon as possible after separation to ensure it reflects

**Divorce and your will**

Separation is distinct from divorce. A divorce, the process of formally ending the marriage with a Divorce Order made by the Court, does affect your Will in Victoria. Once you are divorced, any provision in your Will which refers to your former spouse will be revoked, unless there is something in your Will which shows that you did not intend for that to be the case.

**Divorce and family law claims**

Once a Divorce Order in granted, it is critical to finalise the property settlement from a family law perspective. You have 12 months from the date of divorce to apply for a family law property division, if it has not already occurred. Obtaining advice and acting promptly helps ensure you do not run out of time to make a family law claim. While in some circumstances the Court will allow an application out of time, you should not rely on this.

Whether you are getting married or in the process of separation or applying for divorce, it is important that you



*Whether you are getting married or in the process of separation or applying for divorce, it is important that you obtain legal advice.*

obtain legal advice on both the family law and the wills and estates implications of your change in circumstances.

Wightons have a Family Law team and Wills and Estates team that can provide advice about your situation and the

implications for you. Phone our office on 5221 8777 to make an appointment.

*This article is general information only and is not legal advice or a substitution for such advice.*

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