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MAKING A WILL ON RELATIONSHIP BREAKDOWN

Rumwell Hall
Rumwell
Taunton
Somerset
TA4 1EL
01823 462500

Regional Rural
Business Centre
North Petherton
Somerset
TA6 6DF
01278 664060

9 Parkhouse Road
Minehead
Somerset
TA24 8AB
01643 701888

1A Princes Street
Yeovil
Somerset
BA20 1EN
01935 426047

www.amicuslaw.co.uk

If your relationship has ended then you should review your Will, especially if you have children, or if you do not intend to divorce your estranged spouse at this point in time.

If you die intestate (ie without a Will) then a former partner who you were not married to and no longer live with is not normally entitled to anything from your estate. If you are married but separated your spouse would still be entitled under the Intestacy Rules, albeit the amount varies depending whether or not you have children. Once you are divorced your former spouse normally has no entitlement on intestacy albeit they may be able to claim against your estate if you were making maintenance payments to them for their own benefit.

If you die with a Will then a former partner, whether you are married to them or not, still remains entitled under it until you change it. Once you are divorced from a spouse then your Will is interpreted as though your spouse had died before you and has no entitlement unless you make a new Will post divorce which benefits them. As above, they may be able to claim against your estate if you were making maintenance payments to them for their own benefit. Their appointment as Executor lapses although this can leave you without an Executor.

However there is a window between when you first decide your marriage has broken down and before when a decree absolute will be granted when your soon to be former spouse could still be an Executor and beneficiary of your Will if you do not otherwise change it. We would recommend changing your Will sooner rather than later. At the same time it is also important to consider severing the ownership of any property which you own jointly; otherwise this could pass to your former spouse automatically.

If you have children under 18 then having an up to date Will is even more important as if you are intestate or have a Will without an Executor then any surviving parent of your children is entitled to become the personal representative of your estate. Accordingly, an ex-spouse or partner could have control of your children's inheritance. If you have children from more than one relationship then your Personal Representatives could be two former spouses or partners who do not get on and which could spell disaster for the successful and cost-effective administration of your estate and protection of your children's inheritance.

A carer of children (even where that carer is a parent) can request financial help from a Trust Fund to assist with looking after children, if that carer is also a Personal Representative of your estate they have a financial interest in deciding how much to pay themselves from the children's inheritance, and there may be little that can be done to stop them abusing this opportunity.

Your Will should also appoint Guardians to have responsibility for any children under the age of 18 although the appointment is normally only effective after the death of all those with Parental Responsibility for the children.

Your next of kin are normally responsible for making your funeral arrangements but if this is your children you may wish to use your Will to nominate someone else to have this responsibility until the children are old enough. You can set out your wishes as to burial/cremation and funeral formalities. It can also say if you wish your body to be used for transplant surgery or for medical research. However, as the Will may not be read for some time after your death, it is also important to let your family/friends know your wishes.

When making a Will, you should also consider making a Lasting Power of Attorney to appoint one or more people to look after your financial affairs if you became unable to do so because of mental or physical impairment. This is even more important if you no longer have a spouse or partner who may have been able to do this previously. Fuller information is available in our Lasting Powers of Attorney Leaflet

Further information about Wills generally and Inheritance Tax Planning can be found in other leaflets in this series – please ask for them.

It is therefore vital to make a Will appointing Executors of your choice who can then become Trustees of your children's inheritance until they get to the age you have specified in your Will at which they should inherit, and to set out who should look after your children and who should have responsibility for your funeral. Taking care of this can help avoid unwanted outcomes and family arguments.

For further advice about making a Will or to make an appointment contact David Satchell (david.satchell@amicuslaw.co.uk) for our Taunton, Yeovil and North Petherton Offices on 01278 664060 or Andrew Bensley (andrew.bensley@amicuslaw.co.uk) at our Minehead Office on 01643 701888.

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