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Yorkshire's Legal People

The Effect of Marriage and Divorce on a
Will.

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It is usual when an individual is unhappy with the contents of a Will, that a new Will is made that revokes the older one. There are however, some circumstances that will automatically either revoke or invalidate some dispositions in a Will.

Marriage/entering into a Civil Partnership

On Marriage or Civil Partnership, an individual's existing Will is automatically revoked. This means that a Will becomes invalid and the estate will be distributed in accordance with the 'Rules of Intestacy' (a Statutory checklist which determines where property goes without a Will). Your entire estate may not necessarily go to your spouse/civil partner under the intestacy rules so a Will is vital to ensure that your wishes are documented prior to and during marriage.

It is possible however to avoid the revocation by making a Will 'in contemplation of marriage' which means that a clause can be placed in your Will that stipulates that an impending marriage does not revoke the Will. This means that you do not have to wait until after marriage to make a Will so that provisions are in place. There are however specific rules to ensure that a Will is not revoked by marriage. A Will cannot be made in contemplation of any marriage (there must be an intention to marry a specific person) and it is therefore important to seek advice to ensure that a Will made in expectation of marriage is enforceable.

If a Will is not made prior to marriage, a cohabitee is not entitled to any provision from your estate under the Intestacy Rules. Regardless, under the Inheritance (Provision for Family and Dependents) Act 1975, a cohabitee can make a claim for financial provision. This is however difficult to claim under, time consuming, costly and stressful for your family so it is vital to make an effective Will prior to marriage.

Divorce/dissolution of a Civil Partnership.

On an individual's divorce (on the grant of the 'Decree Absolute') or on the dissolution of a Civil Partnership (the 'Final Dissolution Order') a Will that is already in existence continues to be effective, save that the former spouse or civil partner is treated as though he/she has predeceased (unless contrary intention is expressed). Therefore, any gift to a former spouse/civil partner will fail. The gift will then fall into the 'residuary estate' for the alternative beneficiaries in the Will. If there are no alternative beneficiaries named in the Will, the property will be distributed in accordance with the Intestacy Rules. It is important to highlight that although the former spouse/civil partner will not receive any benefit from the Will following divorce, they can still claim for financial provision under the Inheritance (Provision for Family and Dependents) Act 1975. It is therefore pivotal, especially prior to the finalisation of the divorce, for an individual to remake their Will excluding the soon-to-be former partner to ensure that the estate passes appropriately should something happen whilst waiting for the Decree Absolute or Final Dissolution Order. We will draft a statement to accompany the Will giving reasons why no provision has been made for that former spouse. This will assist to safeguard the testator should that former spouse attempt to make a claim.

Regardless of any impending marriage or divorce, we recommend that a Will is reviewed every 5 years to ensure that the contents still accord with the individual's wishes. A change in circumstances can often leave new family members without provision or the estate open to tax issues should the individual acquire new assets.