Wellers Law Group LLP

A GUIDE TO WILLS ON DIVORCE

The legal practice with
the personal touch.

Contents

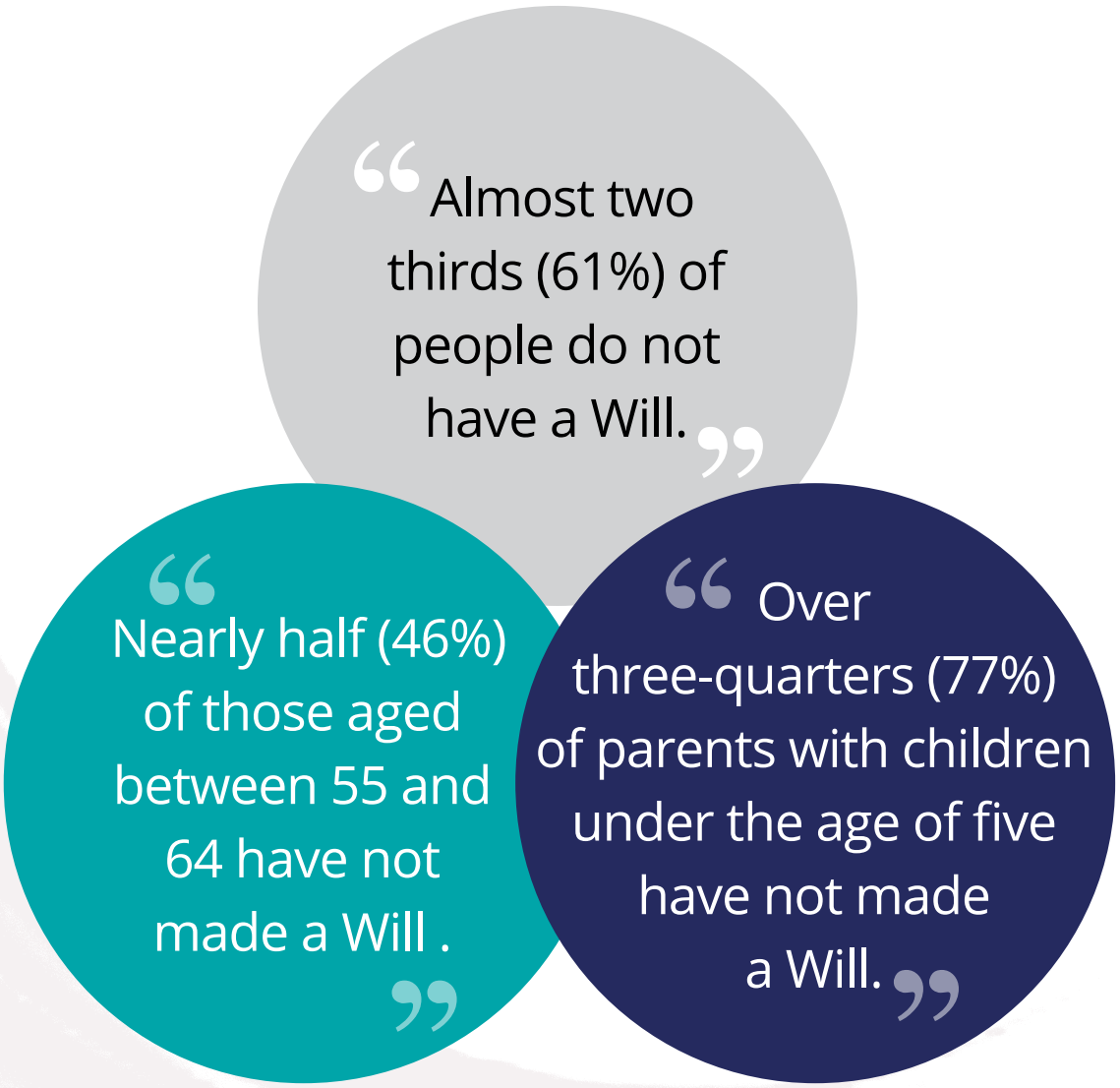
Introduction

Divorce can be a very difficult time. It can seem that everywhere you turn there is someone there to offer you advice or their opinion.

This booklet cannot be a comprehensive statement of the intricacies of law and practice nor can it take into account your personal circumstances. As such you should not rely on this booklet. We will be able to advise you on what the law and current practice is, how the law may affect you and your family, what you might expect from the law and what the costs may be.

If you require specific guidance then we can arrange for a member of our Wills team to get in contact with you.

Some facts on Wills



Scenarios on divorce and separation

- **I am married but I don't have a Will**

  If you have not made a Will and you die you are said to be "Intestate" and the rules of Intestacy decide who gets what. The rules are set out below; they are complex and they depend upon whether you leave children as well as your surviving husband/wife.

- **The rules of Intestacy – married couple (England and Wales)**

IF
No children, nor parents, brothers, sisters, nephews or nieces

THEN
Your spouse inherits everything

IF
You have a spouse and children

THEN
Your spouse takes:
- All personal belongings
- £250,000 absolutely
- Interest on half the remaining assets

Your issue (children) take;
- Half the residue on reaching 18, or on marriage

IF
You have a spouse, no children but other relatives

THEN
Your spouse inherits everything

- ## What if I am already divorced but don't have a Will?

  If you have already divorced i.e. Decree Absolute has been pronounced in your divorce proceedings and you die then you are still said to be "Intestate" and the rules of Intestacy apply. As you are no longer married the rules are slightly different. They are still complex and again depend on whether you leave children.

- ## The rules of Intestacy – single person (England and Wales)

IF YOU HAVE Children	**THEN** Everything is taken by your children
IF No children	**THEN** By your parents
IF No parents	**THEN** By your siblings and their children
IF No siblings	**THEN** By your half-brothers and half-sisters or their children
IF No half-brothers or half-sisters	**THEN** By your grandparents
IF No grandparents	**THEN** By your uncles and aunts or their children
IF No uncles or aunts	**THEN** By your half-uncles and half-aunts or their children
IF No half-uncles or half-aunts	**THEN** The Crown, Duchy of Lancaster or Duchy of Cornwall takes everything

- ## I have a Will but am not divorced yet

  If you have a Will and are not yet divorced then it will continue in force until such time as any divorce is granted. Therefore anything in your Will that you have left to your husband/wife will still pass to them regardless of whether you have separated and are in the process of divorcing. As such, upon separation or in contemplation of divorce proceedings you may wish to review and consider updating your Will.

- ## I have a Will but am divorced

  On the grant of your Decree Absolute if your Will still provides for your ex-husband/wife it will be read as if that person has died. This means the rest of your Will is valid but in effect your ex-husband/wife is now cut out of the Will. However, after a divorce, particularly if financial matters have been involved, consideration should be given to updating your Will.

- ## What if I re-marry after my divorce?

  If you re-marry it automatically revokes the entirety of any Will that you have unless that Will was made in contemplation of your marriage. In these circumstances, if you were to die, then the rules of Intestacy, as set out above would apply but this time to your new husband/wife.

- ## What if my husband/wife dies and I was receiving maintenance from them at the time of their death?

  If a person dies leaving a dependant (including an ex-husband/wife) who has not had proper provision made for, then the surviving ex-husband/wife can if necessary make an application to the Court under the provisions of the Inheritance (Provision for Family and Dependants) Act 1975. This means the Court can to some extent rewrite the Will of a person who has died so as to make proper provision for the surviving dependant.

  A “clean break” Court order made following the grant of a divorce normally includes a clause that prevents an ex-husband/wife from making a claim under this legislation provided it is intended that no maintenance is to be paid. If a Court order includes provision for maintenance it is unlikely that there will be such a clause preventing a claim.

Property

Property held as joint tenants

What is a joint tenancy?

When property is owned jointly by two or more people it can be owned as either joint tenants or tenants in common.

How do know if I am joint tenant or a tenant in common?

Generally married couples tend to own the matrimonial home as joint tenants. If however you are unsure, provided the property in question is registered with the Land Registry, as the majority of properties are, then you can clarify this by getting copies of the Land Registry records for the property which will show how it is held.

What happens if a joint tenant dies?

If a joint tenant dies their share passes automatically to the other joint tenant. This happens even if they have made a Will that leaves their share to someone else.

What happens if a tenant in common dies?

A tenant in common is free to leave their share of the property to whoever they wish when they die. If they do not have a Will, then the property will pass in accordance with the rules of Intestacy as set out above.

What can I do if I am a joint tenant?

If you are a joint tenant which most married couples tend to be, but you do not want your husband/wife to get your share in the event of your death then you can "sever" the joint tenancy. This has the effect of changing the joint tenancy into a tenancy in common. This is done by serving a "notice of severance "on the other joint tenant i.e. your husband/wife. You however do not need their consent to sever the joint tenancy nor do you need the consent of the mortgage company, if any. As you then become a tenant in common you are then free to leave your share of the property to whoever you wish. However in the absence of a Will, should you die before your divorce, then under the rules of Intestacy as set out above your husband/wife will still benefit. If the intention is to ensure that your estranged husband /wife will not benefit, then not only would you need to sever the joint tenancy but you would have to either make a Will or update and existing Will.

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