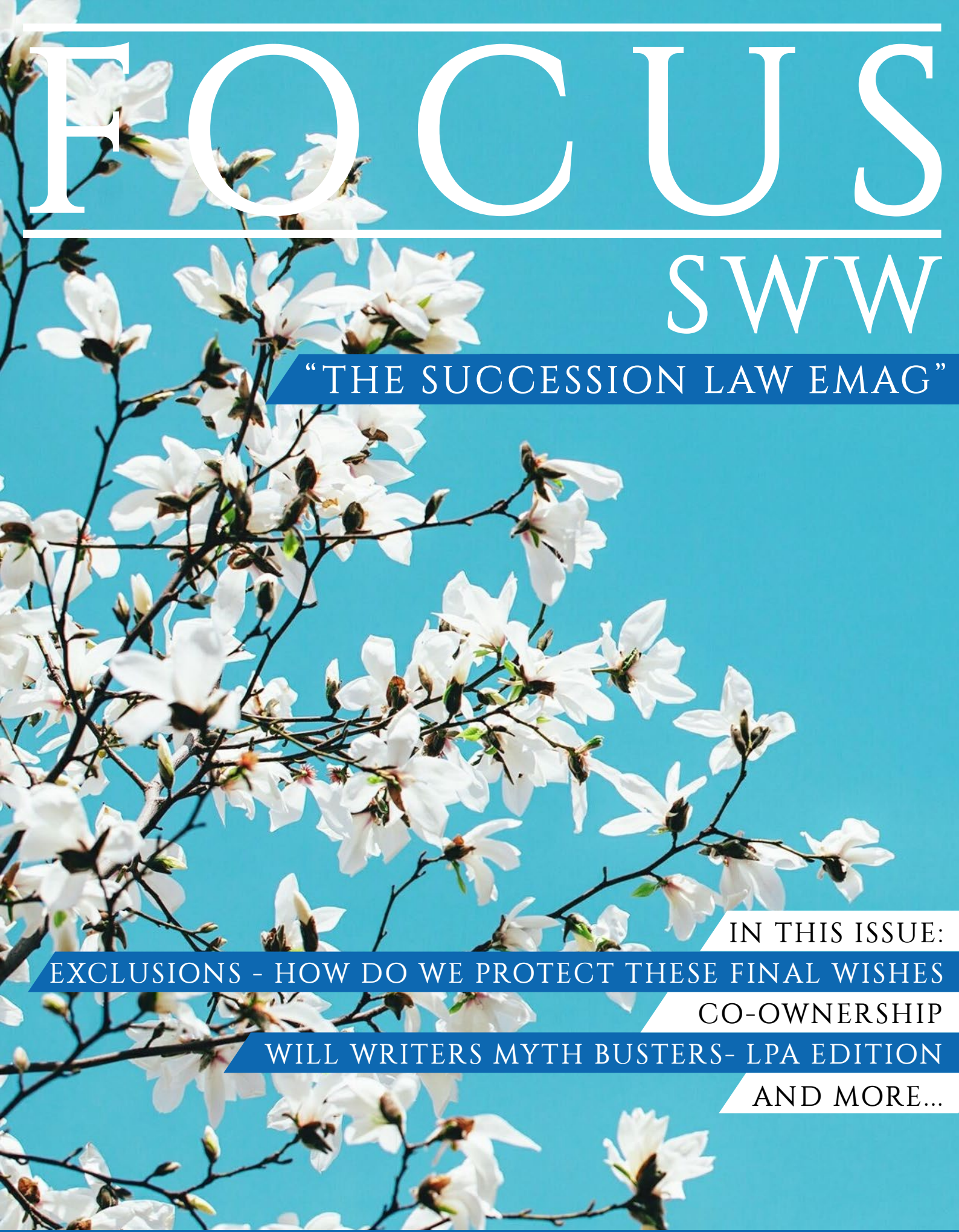
FOCUS SWW

"THE SUCCESSION LAW EMAG"



IN THIS ISSUE:

EXCLUSIONS - HOW DO WE PROTECT THESE FINAL WISHES

CO-OWNERSHIP

WILL WRITERS MYTH BUSTERS- LPA EDITION

AND MORE...

The Society of Will Writers

ISSUE 20 | SUMMER 2022

CONTENTS

A LETTER FROM THE EDITOR

Ruby Nott

Dear Reader,

Warm weather, picnics and holidays are just around the corner; and as we all get into the summer spirit, I would love to welcome you to the 20th edition of Focus SWW!

Here at the Society of Will Writers we are pleased and excited to announce the launch of our 25th annual Conference! This is a very important conference for us, and our team is hard at work making sure everything goes smoothly for such a special year. This years conference will be jam packed with brilliant speakers, informative workshops and of course a little bit of fun! Here at the office we are really looking forward to seeing lots of familiar faces and hopefully some new faces too! Last years conference was such a success that it will be hard to beat but we always love a challenge, and we hope to see you all there!

As the year progresses, I would always remind everyone to have a think about their personal estate planning needs as we head into the warmer months. Having a valid will is one of the most loving things you can do for the people closest to you, and it is easily forgotten or pushed aside by summer distractions. So before you set off on your summer travels, make writing a will your priority.

If you have any queries or questions about the content of this issue or any questions in general, then please feel free to email our office at info@willwriters.com or contact us by phone on 01522 687 888 and we will be more than happy to assist!

Thank you for reading, and I hope that you enjoy this season's Focus SWW! I look forward to writing to you in the next issue!

R. Nott

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The SWW is pleased to offer a variety of advertising opportunities within Focus SWW as well as across our other platforms.

To find out more information, or to see our media pack and rate card, please contact either info@willwriters.com or call 01522 68 78 88

Quarter, half and full page adverts are available within Focus SWW.
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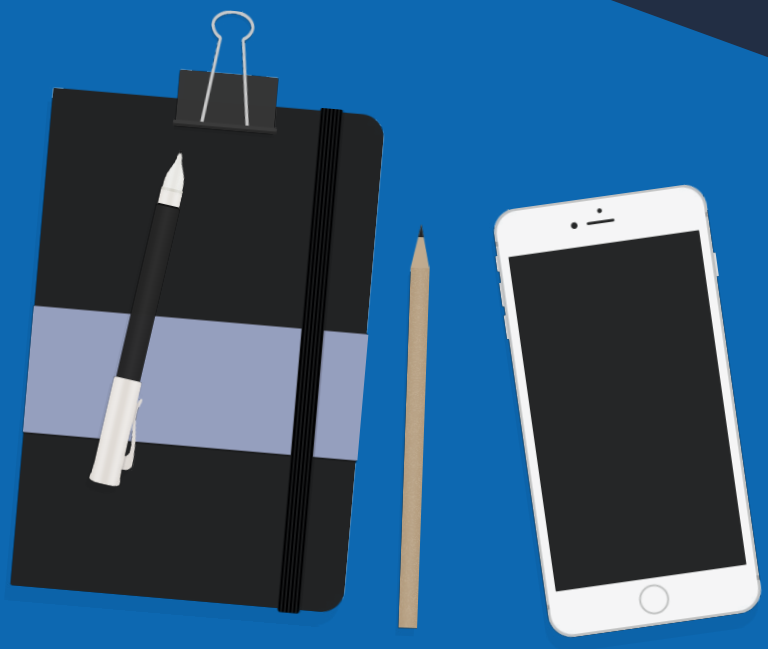

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CO-OWNERSHIP

How do you own your property? And why does it matter when you die? When you buy a home, often you are buying it with someone, and you become co-owners. There are two different ways to actually "own" the property; firstly, would be Joint Tenants, secondly would be Tenants in Common.

Despite the word "tenant" being associated with landlords, in legal language this means you are an owner of the property.

What exactly is the difference between these two?
Joint Tenants (JT):

Both you and your partner (or co-owner) own 100% simultaneously. This isn't to say that there is 200% of the property, but that both parties are treated as having total ownership of the property. If one of owners were to unfortunately die, then by the rules of Survivorship the survivor would be the sole owner.

If the first to die wanted to give their "half of the property" to someone other than the co-owner, they would not be able to as the rule of survivorship takes place before the Will.

Tenants in Common (TiC):

With this way, you and the co-owner will more often than not have a 50/50 split of the property, though it is much more flexible as it allows for people to own the property in unequal shares if they wished to. This can also be beneficial for tax purposes such as utilising Residential Nil Rate Bands with unmarried couples that have kids, or protecting your share of the house when you die.

Most trusts will make use of the property being held as TiC and helps you and the co-owner manage the property more fairly if you have different desires for where you would like your half to go.

What if I want to change from one to the other?
Thankfully, there are ways in which this can be done that will allow you to free up your share of the house so that you have control over it; the most common transition would be from going from Joint Tenants to Tenants in Common. This would likely be done for the reasons mentioned in the previous section; often allowing for a more strategic control over your assets, particularly on death.

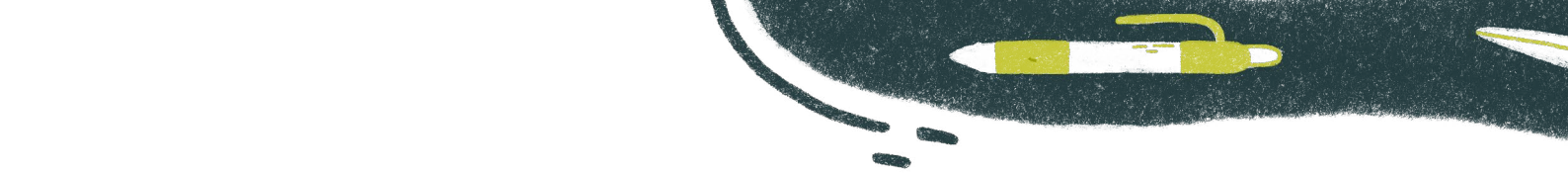
So how is this done?

Going from JT to TiC is done by carrying out a qualifying act of severance. This can be a formal Severance Notice either between the owners (mutual agreement), via mutual conduct or can be done unilaterally (by one party).

If you ever have any concern or worry about completing this correctly, speaking to a professional such as a Will Writer that is a member of the Society of Will Writers will help you make sure you and your co-owner hold the property in ways that are most suitable for you.

A Brief Overview
So, often it is married couples/civil partners that own a property as joint tenants, and this is often beneficial if you want your significant other/ the other co-owner to keep 100% of the house if you were to die before them.

Sometimes however, Tenants in Common is a wiser option for holding your property. If you would like to know how this could help you for Inheritance Tax or for ensuring protection for your share of the house, having a Will Written will help get you the advice you need to maximise your benefit.



Exclusions

How Do We Protect These Final Wishes?

While it is an ugly truth, sometimes there are members of a family that have done one thing or another that have earned themselves a place on the list of people clients do not want to benefit from their Will.

So, with consideration to the Inheritance (Provision for Family and Dependants) Act 1975, how do we protect a testator's wishes when excluding someone who might claim under this act?

While it may seem awfully simple, a Letter of Wishes (LoW) that is factual in its nature when explaining why an individual is being excluded will go a long way when it comes to protecting the estate from a claim. This isn't to say any claim is precluded, nor that any claim will fail; but that the likelihood of a claim's success might be diminished.

But a LoW in of itself is not simply enough, the reason the testator has for an exclusion ought to be based on sound reasoning and not one where their emotions are the only reason for the exclusion. The reason ought to be as factual as can be; though this isn't to say the letter must be devoid of emotion, only that there should be a balance that the logical reasoning has been communicated with regard to how the testator feels about the situation.

While this does not seem to be a concrete protection against the estate, if there were such a defence, then the 1975 Act would be far less effective.

So how do you protect yourself as a Will Writer?

Ensure you carry out reasonable due diligence; the letter of wishes should meet the standard mentioned above and ensure your case notes are extensive on how you handled the case, including concerns you may have had and how you assuaged these concerns with sufficiently reasonable justification.

If you're a member of The Society of Will Writers and you're unsure of whether to continue with an exclusion, or that you wish to ensure you've taken appropriate steps, you can always reach out to our technical team who are happy to advise you on matters such as these!


plan
Letter of wishes
to do!

SWW CONFE

We're thrilled to announc
SWW Annual

Once more we're heading back to The Hilton East Midlands Airport Hotel with this year's conference taking place on the 10th and 11th of October. Join us for 2 days of expert talks, engaging workshops, exhibitions and entertainment at what is sure to be an event to remember.

This year's first day includes SWW Director Anthony Belcher's annual update, as well as a Professional Standards Board update from Antony Brinkman.
The remainder of the day focuses largely on the subject of care and vulnerability with talks from Claudine Jackson, Adam Johnson, Tim Farmer and Prof. Keith Brown. The day then rounded off with Ruth Duffin and Stuart Moore from The Office of the Public Guardian, before handing back over to Anthony to close proceedings.

The second day features Alex Horne and Simon Mattison, Neil Denny, and William Eccleston, all making their conference debut in leading the workshops. As a bonus, we're introducing an additional breakfast meeting this year too. All speakers will be covering important topics

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relevant to estate planning professionals including pre-nuptial agreements, branding, and retirement.

As always on the Monday night a private dinner and bar will bring everyone together for a night of celebration and entertainment, this year including magic and live music with a dancefloor.

A 2-day ticket costs just £235 for SWW Members, with single-day tickets and accommodation options available too. Don't forget that conference is a great source of CPD, networking and keeping in touch with the Society so is always worth attending. For full details including speakers' topics and timings, as well as accommodation options and pricing, please see the agenda and booking forms below, or book your place online here.

For any enquiries, please contact Diane Mandeville: 01522 687 888 / diane@willwriters.com – be sure to check our dedicated conference page regularly for updates too!

We look forward to seeing you at The Hilton in October!

WILL WRITERS MYTH BU

What are Lasting Powers of Attorney documents and what do they do?

Well, they come in two forms:

1. LPA for Health and Welfare decisions
Does very much what it says on the tin, it allows for an attorney acting on the donor's behalf to consent to medical treatments and care decisions
Allows for the donor to provide instructions and preferences for how they wish their decisions regarding their health and welfare when they lack capacity
2. LPA for Property and Financial affairs
Similar to the previous form, this one allows for the attorney to manage the donor's property and finances, though this can be due to the donor being away or having lost capacity
This form too can be guided by instructions and preferences of the donor to help restrict/guide how they wish for their property and finances to be managed when they can't do it themselves
The Attorney acts on behalf of the Donor, though this is traditionally for when the Donor loses capacity, an LPA can be registered so that the Attorney can act where the Donor may be absent or otherwise indisposed.

Why do I need an LPA? My next of Kin can handle everything.
Most people believe that if they lost mental capacity, their "next of kin" would be able to manage everything for them, from their healthcare choices to their financial assets, but what they don't realise is that the concept of a "next of kin" isn't a legal concept. By that, I mean that it doesn't have any actual legal meaning and does not grant a hypothetical next of kin any rights to help manage your assets or wellbeing.

I can just worry about having an LPA done when I lose capacity, even IF I lose capacity right?
Not correct, to give someone else the power to look after not only your finances but also to look after you and your healthcare wishes, you need to give your 'attorneys' the powers to act on your behalf while you still have the ability to give them this power.

If you were to lose capacity, by law you no longer have the means to give this power and your family/friend(s) will have to make an application to the court and go through a process that is far more arduous compared to simply having an LPA in place, known as deputyship. It can be costly, time-consuming and removes any form of choice away from you. Often the courts will choose who is to act on your behalf; should you lack any suitable candidates for the deputyship, the courts could even appoint the local authority instead. All in all, An LPA means you have chosen those who are to be your attorneys as well as your preferences/instructions to help guide them in ensuring your wishes are met.

Nobody can tell the future, so it is worth being prepared just in case; you might never lose capacity, but what if you do?

USTERS – LPAs EDITION

Our money is in a Joint Account, so we will still be able to access our money if one of us loses capacity.
Actually, if the bank learns that one of the owners of a joint account has lost capacity, it is likely going to freeze the account as one of the account holders can no longer consent to the use of the funds held in said account. Though the policy your bank employs for loss of capacity is something you can query them about.

I'll lose capacity when I'm older so why should I worry, I'm only in my 30s/40s etc?
While it is true that most cases of loss of capacity take hold in the later years of one's life, if you play sports/extreme sports or have a potentially hazardous line of work, you may find yourself needing an LPA a lot sooner than you'd imagine.

An example I would like to use is if someone in your family is a motorcyclist, likes to skydive or even Ski/Snowboard etc, these types of sports inherently bring about greater risk to health, both physical and mental. Not only through physical injury can we lose capacity, as the pandemic has shown us, a disease or illness can catch anybody out at unexpected times.

The LPA is for when you lose mental capacity only, so it's only good for that right?
Take the case of the Londoner who cycles to work every day and the unfortunate happens, a series of events that lead to a collision between the cyclist and the bus.

Let's say that they still retain their mental faculties, but they can't leave the hospital, nor have the means to manage their financial affairs from the hospital bed; this is where an LPA for Property and Financial affairs would be useful.

They could sign an LPA for their family to manage their finances as they still have mental capacity, right?

While yes this is correct, at the time of writing, there is currently a 20 week (nigh on 6 month) waiting list for LPAs to be registered from the date of submission... not too helpful half a year from the day it's needed.

Final Thoughts
These are just some of the myths and misconceptions that surround LPAs, and though there are many more others this piece does have to come to an end at some point! Hopefully this brief overview of the major points of misconception help clarifies any confusion you or someone you know may have experienced.

If you would like more specific advice/ information, you can always get in touch with a Member of The Society of Will Writers. You can find one nearest to you via the "find a member" section of our website, just enter your postcode and set a search radius.

Marriage, Divorce and Separation

It is often misunderstood the effect your marital status can have on your Will, arguably sometimes it is particularly unclear. Maybe you wish to have a better grasp of where you stand and what is going to happen if you should pass away given your marital status.

This article aims to help clear up some of the lesser-known rules around Will Writing and Marital Status as the two are much more linked than you may suspect.

(A small disclaimer: all references to marriage and divorce are interchangeable with civil partnership and dissolution.)

Marriage/Civil Partnership

While we are all aware of what Marriage and Civil Partnership is, less commonly known is that marriage has a distinct effect on how you should write a Will. It is mistakenly believed that marriage has no effect on your Will and that there is no concern here.

But in fact, marriage can outright revoke your Will completely unless you take steps to ensure that this doesn't happen. The reason this is a particularly important issue is that if you were to have children from a previous partnership and have a Will benefiting them, by marrying someone new you could be disinheriting them completely by accident.

So, if marriage automatically revokes a Will, but you don't want this to happen to you when you do marry, then what can be done?

This is where the clause known as Contemplation of Marriage comes in, this clause is used in Will Writing where you express a contrary intention to the 'automatic revocation' of your Will upon getting married. Specifically, this clause is a declaration within your Will that your intended marriage to your potential future spouse shall not have the effect of revoking your Will.

Okay, but do we have to get married within a certain time limit for this to take effect?

The most common question we face is how long do you have before this statement becomes invalid? While there is not a concrete time period set, there is legal precedent that the marriage needs to be done within a 'reasonable' amount of time, the longer you leave it, the less likely the contemplation will be able to stand up to scrutiny by the court. If you leave it 30 years to marry, the courts are unlikely to look favourably upon this contemplation clause.

I have this clause in my Will, but I am with a new partner since then, is this clause still valid?

When it comes to the Contemplation of Marriage Clause, there is a restriction in that the Will is drafted with sole reference to the future spouse/civil partner that at the time the Will was made that you intend to be married to; this being set out in s18(4) of the Wills Act 1837.

If you have a new partner that you intend to marry, the clause from the first contemplation is invalid. A rewritten Will with a Contemplation Clause to the new specific person will need to be written for the clause to be valid.

What happens if I didn't manage to include this clause/ revoked my Will?

We have an excellent article explaining what happens when you die without a Will

and if you have revoked your Will via marriage accidentally, this article here should help give you some more context.

Divorce/Dissolution

Just as in real life as under Succession law, divorce is never straightforward. While we have just seen how marriage can affect your Will, divorce also has its own unique effect on the Will. While it may seem logical that divorce would invalidate a Will, it interestingly only has the effect of treating your ex-spouse as if they died on the day of the divorce, as seen under Section 18a of the Wills Act 1837.

What would being divorced mean for my current Will?

Because of the divorce, even if your former spouse survived you, the Will treats them as if they died the day of the divorce and therefore cannot inherit from you by virtue of once being married to you. If your Will states they are to receive 'X' from you, they are unable to because under Succession Law they have died before you so any gift to them will pass on to the next person who is entitled.

However, unlike in marriage, there is no 'contemplation of divorce' clause, so something to watch out for is that until the Decree Absolute has been issued and the divorce officially completed, the other person is still for the purposes of your Will and Succession Law considered to be your spouse with all the entitlements that brings.

Okay so we know that divorcing means that the Will treats the ex-spouse as having predeceased and does not revoke the Will; what if you are separated but would still wish your spouse to benefit or act as an executor or trustee even after the divorce is finalised?

There is a clause for this in Will Writing where you express contrary intention to Section 18a of the Wills Act 1837, not too dissimilar to the contrary intention used in the marriage section.

What does stating this contrary intention do exactly?

By stating a clear contrary intention to Section 18a you are declaring that when your Will comes into effect, the presumption of divorce treating the ex-spouse as predeceased is ignored for the purposes of your Will; that it is your specific intention that they retain the ability to act and benefit as any other individual would under your Will.

Judicial Separation

An unfamiliar area of family law when it comes to the realm of Will Writing, it is more common to have clients who are either married/civil partners, divorced/dissolved or single/cohabiting. So, what is Judicial Separation and how does it affect writing a Will?

Judicial Separation, or otherwise known as a deed of separation does not have the same effect that a divorce has under s18a of the Wills Act 1837. While it is a legal form of separation where the partners have officially separated and have proven they are not cohabiting, it has rather unique rules when it comes to affecting the estate of a client depending particularly on one of two conditions: dying with a Will or dying intestate.

Example 1: Dying with a will that still benefits the spouse you're separated from:

If you are to leave a Will that still benefits the spouse you are separated from, they still retain the right to that benefit.

As we saw in the previous section about Divorce, until a Decree Absolute is issued the spouse is still deemed as your spouse under succession law and is not excluded from benefiting under Section 18a.

If you wanted them to retain their benefit while completing the divorce, this would be the time to express to contrary intention set out in the previous section.

Example 2: Dying Intestate:

The simpler of the two examples, while dying with a Will creates a situation where you are deemed to still be married to the estranged spouse, dying intestate has an alternative take.

Under the rules of Judicial Separation when dying intestate, for the purposes of intestacy the course of action is more akin to divorce. Dying without a Will while Judicially Separated will dictate for the purposes of inheritance that the estranged spouse has predeceased the intestate.

Conclusion

In review, we can see each unique and interesting way that different areas of Marriage/Civil Partnership, Divorce/Dissolution and Judicial Separation can have a remarkable effect on your Will and hopefully we have made it clear how instrumental understanding how your marital status affects your Will is.

If you are thinking of having your Will written or realised that a change needs to be made to your Will as a result of this article, please feel free to contact a Society of Will Writers Accredited Will Writer to assist you. If you would like to find one nearest you, please visit our find a member page or call the office on 01522 687 888.

If you have any questions about Wills, or any of the content in this magazine, please contact The Society of Will Writers:

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Who is your Will Writer?

- All SWW Members will provide up to date advice in line with current legislation.
- All SWW Members adhere to our Code of Practice.
- All SWW Members complete compulsory annual CPD.
- All SWW Members carry at least £2m of insurance cover.

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If you would like to join the SWW then please email info@willwriters.com for our information pack or application forms.