

How to protect your estate from an ex-spouse after your death?

Specific direction by the Court in the Divorce Order

In the case of an ex-spouse, the most important thing you can do is to add a specific clause in your divorce order that specifically excludes claims against your estate. If included, this will protect your estate from any claim pursuant to the Inheritance (Provision for Family and Dependents) Act 1975 that any ex-spouse may bring.

Ensure that your divorce is finalised, including a clean break financial order

Until the decree absolute has been made, the parties remain married and have more rights on your estate. Furthermore, unless a clean break financial order has been made, the spouses' financial needs will not have been considered by the Court. If you die before that happens, your ex-spouse may be able to bring a claim against your estate for financial provision.

Make a Will

It is important to ensure that you obtain proper and professional advice when drafting your Will to ensure that it is valid and achieves the outcomes you desire. This will provide your Executors with your wishes and give them the legal basis to carry out those wishes. If the Will has been prepared by solicitors, they should also have a file of papers setting out your instructions to them which can also be used to defend any claims. If you do not leave a Will, then your estate will be administered as per the intestacy rules (a statutory framework setting out who benefits, in order, depending on their legal relationship to you) which may not reflect your wishes. Furthermore, the Court will have no information about your wishes.

Letter of wishes

It is a good idea to include a letter of wishes alongside your Will setting out why you have chosen to benefit some and not to benefit others. Whilst this is not binding, it is a useful document set out in your own words which can be used to defend any claim brought.

Communication

It is not always easy to do, or possible, but clear communication with both the beneficiaries and those who may not benefit from your estate can often reduce the likelihood of a claim. This allows you to deal with any conflict whilst you are alive and to explain the reasons for your decisions. If done in writing, this can also be placed with the Will to show that they were aware of what they were going to receive, or not receive, as the case may be.

Our contentious probate solicitors have experience in dealing with disputes regarding Wills and inheritance and understand how stressful it can be for those involved. You may have concerns about the way executors or others are handling an estate or you might be considering contesting a Will.

We have expertise in employing a range of tactics, including informal negotiation and mediation to sensitively resolve disputes where possible.

We understand that many of our clients will be recently bereaved and sometimes elderly, and never underestimate the vulnerability of their position when we provide advice and develop a strategy for how to pursue a particular claim.

Contact us

If you require any assistance, please feel free to speak with one of our solicitors.

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