



THE LEGAL MEMO

THE EFFECT OF MARRIAGE AND DIVORCE ON YOUR WILL

EFFECT OF MARRIAGE

- In Ontario, when you get married; any already-existing will is revoked, in its entirety. One exception is if the will contains a clear statement that it was made “with marriage in mind”.
- If the will is revoked and has not been replaced with a will made after marriage then you are treated as “dying intestate”(meaning dying without a will) and the *Ontario Succession Law Reform Act* (“SLRA”) applies. This act sets out in detail the scheme by which, and to whom, your assets are distributed when there is no will.
- Key provisions of the SLRA dictate that if you have a spouse and children, the spouse receives the first \$200,000.00 as a preferential share and the remainder (the “residue”) is divided between the spouse and children according to the percentages set out in The SLRA.
- Another provision dictates that if you have no living next of kin, (as defined in the SLRA), everything goes to the Government of Ontario.



EFFECT OF DIVORCE

A divorce does not revoke or invalidate a will. Rather all the provisions that refer to the now-divorced spouse are revoked. The divorced spouse will no longer be executor or trustee and all gifts to that spouse are now revoked. Separation, by itself, has no impact generally on a legal spouse in a will. The best course would be to execute a new will on either divorce or separation from a common-law partner.

Upon divorce or separation from a common-law partner you should consider that “named beneficiary” declarations in assets like life insurance, TFSAs, RRSPs, and RRIFs should be changed to rename that beneficiary.

Remember that every situation is different and this article deals only with generalities. If you are uncertain as to your legal rights in a certain situation you should always consult your lawyer.