



## Do I need to update my Will after separation?

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We will always endeavour to finalise your family law proceedings, including property settlement, parenting issues and financial matters, in a cost-effective and time-efficient manner. However, there can be many delays during proceedings. To avoid any unforeseen issues resulting from delays, one of the key tasks we ask our clients to attend to as soon as practicable after separation is to [update their Will](#).

Even when all parties are seemingly in agreement and your matter is to be settled by way of consent (outside of Court), settlement of your family law matter can still take time, usually months. You can learn more about some of the primary reasons for such delays in our blog, ["How long do Consent Orders take for family law property settlement?"](#)

## Your family law matter, and updating your Will simultaneously is important

It is very common to prioritise your family law matter over updating your Will when you separate from your partner. We completely understand that your family law matter can be a time-consuming and emotionally, mentally and financially draining time in your life. You don't want to think about your Will. You will update that once your family law matter is finalised, right?

If you are married, it is the usual process to initiate property and/or parenting proceedings prior to obtaining a [Divorce Order from the Family and Federal Circuit Court of Australia](#). This means that you are separated from your partner, however, not yet divorced. There are some [crucial differences between divorce and property settlement](#) which can have some legal implications if one party were to die during the negotiations.

# The negative impact of not updating your Will when you separate

Here is a fictional scenario to illustrate the importance of [updating \(or writing\) your Will](#) as soon as practicable after you separate.

- Party A and Party B are married.
- There are 2 children of the marriage, aged 14 and 17.
- The couple has an asset pool comprising of some superannuation each, their home which is owned as joint tenants and some cash at the bank.
- They have been separated and are negotiating their family law proceedings, each with the assistance of lawyers.
- Tragically, Party B dies before any documents are finalised.
- Neither party updated their Will after separating.
- Party B's outdated Will left all of their estate to Party A.
- In this scenario, it may have been Party B's intention to leave their estate to their 2 children however, without an updated Will, this intention could not be carried out.
- Party B's share of the family home, their superannuation and their share of cash at the bank has now all been left to their former partner, which may not have been their intention.

## Safeguarding your estate after separation from your former partner

There are 3 things that can be done to safeguard you and your estate until family law proceedings are finalised in the event of your death.

1. Prepare an interim Will which notes your intentions in the event of your death prior to your family law proceedings finalising. This Will is short, does not require a lot of instructions from you, and can be drafted, executed, and held with your documents in our safe custody in a short time frame.
2. Ensure that your Power of Attorney and Enduring Guardian documents do not need to be updated. If you have separated from your partner and they are listed as your Power of Attorney and/or Enduring Guardian then you may wish to revoke their appointment and update these documents.
3. If you hold any property as joint tenants with your partner, then sever the joint tenancy to ensure that your share of the property does not automatically transfer to your partner in the event of your death ([link blog here](#)).

## Get help from a Wills and Estates lawyer

If you've recently separated and you're now negotiating property settlement with your former partner in relation to division of the asset pool, one of the first things you should attend to (particularly if you own real property together), is to update your Will.

At E&A Lawyers, we have lawyers experienced in both [family law](#) and [estate planning](#). Call us to arrange an initial consultation with one of our family law lawyers, and they will also be able to assist you in either updating your Will or drafting a new Will and any other estate planning documents you may require.

## Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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