



A Recap of Recent Amendments to the Succession Law Reform Act: What you need to know

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To accelerate access to justice, the Ontario government passed Bill 245 which came into effect on January 1, 2022. Schedule 9 of Bill 245 introduced key amendments to Ontario's *Succession Law Reform Act* ("SLRA") regarding the remote witnessing of Wills, testamentary effects of marriage and marriage dissolution, and validating testamentary documents. These changes, which have had a significant impact on estate planning, are outlined below.

Parties can continue to use audio-visual communication technology for Will signings

Emergency measures were introduced during the Covid-19 pandemic to allow for virtual signings of Wills and Powers of Attorney. Changes to the SLRA made these measures permanent for Wills and corresponding changes to Ontario's *Substitute Decisions Act*, 1992 made these measures permanent for Powers of Attorney.

Particularly, section 4 of the SLRA now allows testators and witnesses to use audio-visual communication technology to satisfy the requirement that they be in the presence of each other for the signing of a Will. This option may assist testators who have poor health or mobility issues by enabling them to participate in estate planning fully via platforms such as Zoom or Microsoft Teams. In order to proceed with a virtual signing, at least one witness must be a licensee within the meaning of Ontario's *Law Society Act*.

Electronic signatures on Wills and Powers of Attorney are still not permitted. Virtual signings require wet ink signatures and involve the use of counterpart documents.



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Marriage no longer revokes Wills, but spousal gifts and executor appointments are revoked upon separation

Bill 245 repealed sections 15(a) and 16 of the SLRA, which stated that a Will or part of a Will is revoked by marriage. The result of this amendment is that testators who have Wills preceding a marriage will not have to re-make or re-sign their Wills in order for such Wills to remain in effect after marriage; they will, however, need to consider whether they wish to make changes to the terms of their Wills to provide for their new spouse.

While marriage no longer revokes a Will, amendments to section 17 of the SLRA state that any testamentary gift made to a spouse, and any appointment of a spouse as executor or trustee, will be revoked upon separation. Formerly, this revocation only applied upon divorce.

A spouse will be considered to be separated from a testator if, before the testator's death, they were living separate and apart as a result of the breakdown of their marriage for a period of three years, they entered into a valid separation agreement, or either a court order or a family arbitration award was made in the settlement of their affairs arising from the breakdown of their marriage.

Spouses who are separating but still intend to give testamentary gifts to each other will need to update their testamentary documents to ensure these gifts are not revoked.

Spousal entitlements no longer apply to the separated spouse if the deceased dies intestate

If a person dies without a Will, their estate will be distributed in accordance with the intestacy laws set out under the SLRA. Generally, a person's spouse and children are the primary beneficiaries under an intestacy and, formerly, the SLRA made no distinction between spouses and separated spouses.

Bill 245 added section 43.1 to the SLRA, which excludes separated spouses from being able to receive spousal entitlements on an intestacy. A spouse will be considered separated from the deceased for this purpose in accordance with the same criteria set out above.

While this change may prevent some unwelcome consequences, it remains advisable to have a Will in place to adequately address all testamentary intentions.

Improperly executed Wills can now be validated through an application to court

Previously, a Will was not valid if it did not comply with the formal signing and witnessing criteria set out under the SLRA.

However, Bill 245 has added section 21.1 into the SLRA which now allows parties to apply to the Superior Court of Justice for an order that an improperly executed Will is valid and fully effective. The Court may grant the order if it is satisfied that the document sets out the testamentary intentions of the deceased.

This amendment may assist in situations where – due to timing issues or otherwise – a document was not

executed properly but testamentary intentions are clear.

Conclusion

For more information on these changes and for further assistance in your estate planning, please reach out to a member of Beard Winter's Trusts and Estates Group.