



ANDERSONS
S O L I C I T O R S

LawTalk Blog



Family Law property settlement and the death of a party

Author: [Ryan Thomas](#)

Email: enquiry@andersons.com.au

Phone: 08 8238 6625

Date: Tuesday January 17, 2017

When dealing with a Family Law property settlement the *Family Law Act* regards the death of a former spouse or partner differently depending on whether proceedings have commenced in court or not.

If one party dies before proceedings have commenced in court, no claim can be made by the other party in the Family Court. Proceedings can only be commenced when both parties to the marriage or de facto relationship are alive.

"If a person dies before proceedings for property settlement have commenced, their assets form part of their estate and are dealt with under their Will."

If a person dies before proceedings for property settlement have commenced, their assets form part of their estate and are dealt with under their [Will](#).

If no provision has been made in a Will for a spouse, the *Inheritance (Family Provision) Act* entitles the spouse to challenge a Will to obtain provision from the deceased spouse or partner's estate for their maintenance, education or advancement in life.

If the deceased person does not have a Will, the [law of intestacy](#) applies which is outside the scope of this blog, however, the surviving spouse or partner can also claim in this instance using the *Inheritance (Family Provision) Act*.

If a former spouse or partner dies after property settlement proceedings have commenced, the proceedings may be continued by the legal personal representative of the deceased person.

The legal personal representative can be the executor or administrator of the deceased person's estate. The legal personal representative will be substituted for the deceased person and will have all the rights and obligations in court that the deceased person would have had. The legal personal representative will also be responsible for carrying out and complying with any Court Orders.

Finally, it is important that you update your Will if you have married, separated or divorced so that your Will reflects the changes in your circumstances and intentions. Otherwise your former spouse may inherit the property you left to them in your original Will.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.