

SECOND MARRIAGE WILL ADVICE

This process is designed to set up what will happen to your assets when you die. We are not attempting to draft an Agreement which will apply should your relationship terminate during the life of both of you. Your Wills only take effect upon the death of one of you or, in the case of Mutual Wills, takes effect when both of you die. If your relationship ends you will most likely make new wills.

The death of the first of you will create a clash of priorities. On the one hand you would both want the survivor to be able to live comfortably into the future but on the other hand you both wish to ensure that the value of assets which you have accumulated until now will pass to your children. You really need to make a decision as to which is the first priority: - the lifestyle of the survivor or the benefit to the children. If you are most concerned to protect the lifestyle of the survivor then you should each leave everything to each other and each will then divide the whole proceeds equally between all of your collective children upon the death of the survivor. This can be made legally enforceable by the use of Mutual Wills which prevents the survivor from changing his or her Will after the death of the first. The downside of this option is that the children of the first to die may have to wait many years before they receive any benefit from the Estate of their deceased parent.

More or less the same outcome is achieved by the first to die leaving their Estate to the survivor for the life of the survivor and then to the children of the first deceased. A halfway house can be achieved by giving the survivor the right to the use of the Estate for a limited period, such as 5 years which allows the survivor a reasonable period of time to make alternative lifestyle arrangements and then passes the benefit to the children of the first deceased relatively quickly.

Another method of balancing the competing interests is to leave a particular asset to the children of the first to die and the balance to the survivor. Often, this is the Superannuation benefit but consideration must be given to whether the survivor will have sufficient assets to live a comfortable lifestyle if the superannuation of the first deceased were not to be available.