

WILLS & ESTATES

Providing for Children

Mutual Wills (with some reservations) are one way to go

How can you ensure that the children of your marriage or partnership will receive the assets you and your partner have accumulated while making sufficient provision for your surviving spouse? Life estates used to be popular but the problems they always had are now compounded by capital gains tax.

Increasingly, parents are turning to a mutual will by contract in order to provide for children while allowing the surviving spouse to enjoy use of the assets they have acquired.

A typical situation would be a married couple with children who have accumulated some assets during their marriage. Both want the surviving spouse to take the whole estate but that he or she, while having use of the assets, will be compelled to leave the estate to the children of the relationship. The partners believe that by entering a contract to make a mutual will it would ensure that no matter what the surviving spouse did in terms of entering another relationship or even changing their will, the children of the first relationship would receive the whole of the estate left by the surviving spouse when he or she died.

A contract to make mutual wills, while it may ensure that the next generation receives the assets acquired by the parents, has some limitations. An obvious one is the unfairness that such a contract would cause if the surviving spouse were to re-marry and have children.

If you and your spouse are thinking of making wills, discuss the matter fully with your solicitor and explore the possibility of making a written agreement which will provide for a variety of mutually acceptable terms and conditions.