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LIFE INTERESTS IN WILLS

Deciding how your assets are to be distributed upon your death can sometimes be a difficult decision. Especially if you have children from a previous relationship and are unsure how to provide for them without affecting your spouse/partner's living situation.

You also need to bear in mind the provisions of the Family Protection Act 1955 which provide that Will makers have a moral duty to provide for certain family members in their Will such as spouses/partners and children.

Take for example Joe whose main asset is his family home which he lives in with his wife Deborah. He has three children from a previous relationship who no longer live at home. Despite their age, his children are still able to make a Family Protection Act claim upon his death if he left everything to Deborah. The issue for Joe is, how to make provision for his children yet ensure Deborah is not forced to sell their home if he passes away.

A good option for Joe is to give Deborah a life interest in the property. This means that if anything ever happened to him, Deborah could continue to live in the property, on the basis she is responsible for payment of the property outgoings (rates, insurance etc).

If, in a few years down the track, Deborah decides to sell and move into a Retirement Village Unit, Joe's Will provides her with flexibility to do so. She is able to buy another property using the Estate's half share of the sale proceeds.

Upon Deborah remarrying or if she passes away, the life interest comes to an end. She then retains her half share (or it forms part of her Estate) and the property can be sold.

Upon termination of the life interest, Joe's half share is distributed in accordance with his Will. His Will provides that upon termination, the proceeds are to be divided equally between his children.

By granting Deborah a life interest in the property, this means that Joe is able to ensure Deborah could continue to live in the property after his death while keeping the inheritance in his family.

Should you have any further queries regarding life interests, please do not hesitate to contact the Collins & May Law Team.

20 MINUTE FREE

**WANT to review your Family Trust structure?
THEN call us and take advantage of our 20 Minute Free interview**