

COLLINS & MAY } LAW

NEWSLETTER

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If you would like any of our previous newsletters or any of our free booklets on Wills, Family Trusts, Relationship Property of Business Law please email

Family Trusts for Second Relationships How to Protect your ½ from becoming a ¼

By Paul Whitmarsh



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Many of our clients ask us when is the best time to set up a Family Trust? Whilst there is no definitive answer as every persons circumstances are different, certainly a very good time to set up a Family Trust is before entering into a second relationship.

The last thing you want is for the half you have received from your previous relationship to become a quarter once your new relationship qualifies under the Property (Relationships) Act 1976. Under the Act if you have transferred assets to a Family Trust before a relationship begins these assets are separate property and cannot be claimed by your future ex-partner. Conversely, in the event that the transfer of assets to the Family Trust occurs during the relationship, your ex-partner would be able to make a claim under the Act.

JACK and JILL

Jack's first marriage ended in a bitter separation and both he and his former wife walked away with around \$500,000.00 each.

Although heart broken Jack meet Jill and within a few months they had moved in together and began a defacto relationship. Although Jack remembered that his lawyer had advised him to put the money into a Family Trust, he was giddy in love, and although Jill was ten years his junior he did not foresee any future problems with the relationship.

After three and half years the relationship broke down and Jack was astounded to receive a letter from Jill's lawyer claiming half of the value of the family home and other relationship property that Jack thought was protected.

Eventually they settled their differences out of Court and Jill received half of the relationship property and Jack was left wondering what had happened as the approximate million dollars worth of assets from the first relationship was now less than \$250,000.00 some four years late.

If Jack had transferred the \$500,000.00 to a family trust prior to entering into the defacto relationship with Jill these assets cannot be subject to a claim under the Act and Jill would receive nothing.

Even if he had transferred the assets to his Family Trust during the relationship the law would have allowed Jill to still make a claim because the property was transferred during their time together. In order to avoid this a Contracting Out Agreement could have been signed between Jack and Jill for her to acknowledge that she cannot make any claim whatsoever against the Trust assets.

Now that Jack has learnt his lesson he immediately set up a Family Trust and purchased a more modest family home from the balance of funds. If he was ever to enter into another relationship this assets would be protected for himself and his children and grandchildren (the beneficiaries of his Family Trust).

If you have any queries in relation to creating a Family Trust do not hesitate to contact us.

Next Issue: Employer / Employee Good Faith Obligations.