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Safeguard yourself for a second marriage

Although second and third marriages are now extremely common, if you don't pay attention to the legal and financial fine print before you dive in again, you could end up with a lot less than you bargained for. Family law specialist **Nabil Wahhab** highlights some of the dangers.

Life would be much easier if, early on, we were handed a magical manual on relationships that just happened to contain the name of our future partner, as well as insider tips as to what ticks them off and how to keep them happy.

But of course it simply isn't that easy, and there's often a lot more at stake than just feelings when two people enter into a relationship. It's anything but romantic, but there are some essential pieces of information you can arm yourself with before you embark on a new relationship. These measures are applicable to anyone going into a relationship or marriage, but particularly for those entering the legal minefield of a second (or third) live-in relationship or marriage.

Protect your assets with a BFA

Binding Financial Agreements (or BFAs), which are similar to American pre-nuptial agreements, are a good measure of asset protection. BFAs are perhaps better than pre-nups as they can be set up prior to the commencement of the

relationship, or following the break up of a relationship, separation or divorce.

A BFA generally deals with division of assets and superannuation before a relationship or marriage gets going. You might decide that each party keeps whatever assets they, for example, brought into the relationship, and divide whatever is accumulated if the marriage or relationship fails. This is important because one or both of you may have children from a previous relationship and you may wish to provide for those children from the assets already accumulated. Some couples may decide to use a BFA to protect one of the assets, such as the family farm that has been owned for generations, or a business interest that one spouse owns with third parties. The rest of the assets could be divided using another formula or left to the Court to decide.

The effect of a BFA is to reduce or eliminate the involvement of lawyers if the relationship fails and you separate. It provides certainty of outcome, so you both know where you stand. A BFA is a contract which defines the rights and obligations of each partner during the

relationship and what will happen to your assets and superannuation if the relationship ends.

Estate planning for blended families

Handling the tricky emotional and relational issues surrounding stepchildren is difficult enough. But if you or your spouse have children from a previous relationship, you should also consider matters such as the impact on your superannuation death benefits and the structure you are using in any purchase of assets as soon as possible. For instance, if you and your current spouse have just purchased or are intending to purchase a property in joint names, then notwithstanding what you provide for in your Will, on your death your interest in the property will be given to your spouse by survivorship.

If you have nominated your current spouse as the beneficiary of your superannuation death benefit, have you considered the impact of such a nomination on your children from your previous relationship? These and other estate planning questions for blended families will be followed up in future issues of *zack*.

Assisting your children financially

While many parents may generously provide financial help to their children, most of them do not consider the effect of this assistance on their retirement plans, or the possible outcome if their children separate from their partners in the future. I see many cases where parents lend or give hundreds of thousands of dollars to their children to give them a head start in life – then the adult child separates from their spouse. Did the parent intend the loan or gift for their child and their spouse or only for their own child? What will happen to the money when the adult child and their spouse end up in the Family Court? How will the parent protect them and secure repayment of the money?

Planning is the answer – and it is important that thought is given to this prior to advancing any money. It may be best to have a loan agreement between you and your adult child or between them and their spouse. In forthcoming issues I will deal with this issue in greater depth and give you some tips on how to protect your adult child and yourself.

Don't give your life away until ...

Let's assume that you separated from your spouse some time ago and have just met

someone wonderful. You have not yet made a property settlement with your former spouse. Anxious to settle financially because you want peace and harmony in your new relationship, you reach an agreement with your former spouse and give effect to it – but no orders have been made by the Court, nor have you entered into a BFA. Are you protected from further property claims in the future by your former spouse?

The short answer is no. Prior to you and your former spouse giving effect to the property settlement, orders should be made by the Court giving effect to the agreement or a BFA entered into. If not, your former spouse could spend the money and then apply to the Court for property settlement seeking a further division of whatever assets he or she has, together with whatever assets you have at the date of hearing – which may be months or even years after the agreement that you struck and gave effect to.

The Court has, in the past, made fresh property settlement orders in favour of former spouses who received their full entitlement when the first unenforceable agreement was entered into and required one spouse to pay the other further monies. This would be in addition to the significant legal costs that you would incur.

A word of advice: don't let your former spouse have another bite of the cherry. Hold onto the money until the agreement is signed, sealed and delivered.

