
Blended Families and Mutual Wills

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Blended families (“Brady Bunch families”) create their own challenges in estate planning. In particular, how can both sets of children and both sides of the family be protected?

One method is the use of Mutual Wills. Mutual Wills are based on the Willmakers signing a contract regarding the contents of a Will.

A Will is of its nature revocable and can be changed. The main feature of Mutual Wills is that there is an express or implied contract not to revoke a Will after the death or incapacity of one of the contracting parties.

Typically a Mutual Will Contract will include covenants as to the agreed terms of the Wills of each party which are not to be changed.

Advantages of Mutual Wills

One advantage is that a Mutual Will gives the survivor of the contracting parties more freedom and flexibility to deal with assets during their lifetime while still reflecting the joint wishes of the Willmakers at the time they make their Wills. This is contrasted with limitations imposed by way of alternatives such as life estates.

Secondly, the contracting parties can both have a say in how jointly held assets which will ultimately be dealt with by the survivor.

Disadvantages of Mutual Wills

The survivor may take action to circumvent the Mutual Will Contract by, for example, disposing of assets. Usually clauses are included in Mutual Wills to restrict this but they may be difficult to enforce.

Secondly, the prospective beneficiaries will need to know about the existence of the Mutual Will Contract as they will be the ones who may need to take action to enforce the trusts created by the Mutual Will Contract.

Thirdly, the executor’s role can become more burdensome. It should also be noted that Mutual Wills are no different from other Wills in that they may be subject to Court review under the family provision sections of the Succession Act.

The constructive trusts created by Mutual Wills can give rise to problems but the fact is that



some couples want to create binding contracts in relation to their Wills. Wills and these contracts deal with significant property interests. As usual in estate planning matters, it is essential that Willmakers engage a legal advisor who can give frank advice after considering the circumstances of the parties, the nature and ownership of assets and consideration of the potential beneficiaries.

December Tip

We are also often consulted by clients around this time of year, especially where they are planning an overseas trip. There is nothing wrong with this. Travelling gives us a useful reminder that our financial and legal affairs need to be up to date.

It is useful to have a habit of summarising your legal and financial affairs on a regular basis and this includes checking whether Wills, Powers of Attorney and Guardianship Appointments are up to date.

Once a review has been conducted once, it is relatively easy to update in the future and it is surprising how often there are changes that have occurred which can be simply re-documented.