



## Mutual Wills

You die, your assets pass to your spouse. Your spouse then dies - and your spouse's new partner ends up with all your assets. What about your children? They miss out. Not what you intended? There is another way...  
**'Mutual Wills'**

Usually couples make 'Mirror' Wills, that is - you make a Will leaving your Estate to your spouse and, if your spouse dies first, your Will then leaves your Estate to your children. Similarly, your spouse makes a 'Mirror' Will leaving their Estate to you, and if you have died, leaving their Estate to your children.

The intention is that when you have both died, your 'combined Estates' will flow to your children.

But what happens if your spouse **re-partners or remarries**? Remarriage usually voids an existing Will - so if your spouse then died intestate - their assets would pass to their new partner. Also, your spouse may change their Will after you have died - to benefit future children of their new relationship at the expense of the children of your marriage.

### **How can Mutual Wills protect your estate planning intentions?**

'Mutual Wills' can overcome this problem by imposing a 'binding agreement' on both you and your spouse to pass your Estates to your intended beneficiaries - e.g. your children. Mutual Wills generally provide that each party will leave their Estate to the survivor, on the condition that neither party will revoke or change their Will without the consent of the other party.

Mutual Wills are particularly important in 'second' or later marriages - where one party may bring children from an earlier relationship. Mutual Wills ensure that your Estate is distributed fairly and as you intend among your various dependents. Your Mutual Wills may give the survivor reasonably unrestrained enjoyment of your assets, but with an obligation to preserve the assets and pass them to the children of one or both relationships.

Mutual Wills are a form of 'insurance' against the fickleness of changing affections.

### **Do Mutual Wills protect joint assets?**

Mutual Wills are also relevant when you own property as 'Joint Tenants' with your spouse. Through the law of 'survivorship', jointly owned property ordinarily passes to your spouse automatically - and does not pass through your Will. So if you own property jointly with a new partner, and you want to pass your interest in your property to children of an earlier relationship, Mutual Wills can 'sever' the Joint Tenancy, and ensure that your interest in the property passes into your Estate and then to your children.

### **Preserving assets for the next generation**

Another benefit of using Mutual Wills is 'capital preservation'. After your Estate passes to your spouse, your spouse may diminish the Estate by making gifts to other people (or trusts) during their lifetime, or by flagrantly wasting the assets. The consequence being that when your spouse dies there are less assets to pass to the children of your marriage. Mutual Wills can overcome this by imposing



either a general obligation to maintain the size of the survivor's Estate, or impose restrictions on disposing of specific assets. If capital preservation is a particular concern to you, we also recommend adopting Will incorporating appropriately drafted 'Testamentary Trusts', as part of your broader Estate Plan.

### **What next?**

Mutual Wills can provide a **range of benefits** within your Estate Plan - most particularly to protect the interests of your intended beneficiaries. However, as usual, benefits come with some drawbacks - the main one being that you are 'fettering' both your discretion, and your spouse's discretion, to make decisions in the future.

If you would like to discuss the pros and cons of incorporating Mutual Wills into your Estate Plan, call us on **1300 654 590** or email us at [wehelp@adlvlaw.com.au](mailto:wehelp@adlvlaw.com.au).

Further information can also be found on our website at [www.adlvlaw.com.au](http://www.adlvlaw.com.au).