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### MUTUAL WILLS

#### What are Mutual Wills?

Mutual Wills are Wills typically made by two individuals (husband and wife) in which they agree not to alter their respective Wills during each of their lives and after the death of one of them. While both parties are alive, any changes to a Mutual Will by one party must be with either the consent of the other, or with prior notice to the other who must then have the opportunity to change his or her Will.

#### What are the effects of having Mutual Wills?

After one person dies, the survivor is bound by the terms of his or her Will to dispose of his or her assets as agreed with the deceased. While the survivor cannot be prevented from changing his or her Will, by entering into a Mutual Will you create a legally binding contract which will continue to bind your Estate (and your assets) even after your death.

For example, if the survivor changes his or her Will, upon the survivor's death, the beneficiaries under the survivor's first Will may file an Inheritance Act claim to the extent the second Will is inconsistent to the first. If a claim is filed, the Court may order the survivor's Executor to hold that part of the survivor's Estate affected by the first Will on trust for the beneficiaries of the first Will.

In this regard, because any revoked Will may be relevant in family provision proceedings or in the event the validity of your current Will is questioned, we recommend that all Wills you have revoked be kept together with your current original Will.

#### In what situation would you consider preparing Mutual Wills?

Having Mutual Wills is analogous to a double-edged sword. For example, if both parties agree to the terms of each other's Wills, a Mutual Will can create a degree of certainty that the parties' assets will pass as agreed by the parties upon the death of one.

On the other hand, problems can arise where one party dies, leaving the other party in a position in which they cannot change the "contract" because it is no longer possible for the party who has died to change his or her Will. This "contract" continues to bind the Executors of those who have entered into the contract, even after their deaths. This situation can be made worse if the survivor enters into another relationship or remarries and has children from the second marriage. Mutual Wills must be so worded to ensure that the Wills remain effective in the case of remarriage whether before or after the death of the first dying, but without barring remarriage.

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