

# Mutual Wills

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

## What are Mutual Wills?

Mutual Wills are Wills made by two individuals (typically husband and wife) pursuant to a contract in which they agree to make Wills in agreed terms and 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 the Mutual Will agreement 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 agreement, 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, then upon the survivor's death, the beneficiaries under the survivor's first Will may file a claim pursuant to the Mutual Will agreement and 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 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 agreement 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 "Mutual Wills agreement" 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 Mutual Wills agreement, even after their deaths. This situation can be more difficult if the survivor enters into another relationship or remarries and has children from the second marriage. Mutual Wills agreement 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.



All mail to:

PO Box 460  
NEDLANDS WA 6009

**Nedlands (Head Office)**  
83-85 Stirling Hwy  
NEDLANDS WA 6009

**Fremantle**  
3/18 Parry Street  
FREMANTLE WA 6160

**Bunbury**  
119 Beach Road  
BUNBURY WA 6230

Associated Firm  
**Malaysia**  
Jerald Gomez & Associates  
KUALA LUMPUR  
MALAYSIA

Telephone calls  
Answered 24 hours

**Telephone:**  
(08) 9386 5200

**Country Calls:**  
1800 675 200

**Facsimile:**  
(08) 9386 4650

**Email:**  
[legal@butlers.com.au](mailto:legal@butlers.com.au)

**Website:**  
[www.butlers.com.au](http://www.butlers.com.au)

Copyright © 2003 - 2012 - Butlers Barristers & Solicitors

*Disclaimer : This handout is provided by Butlers for general information purposes only. While every care has been taken in preparing this handout, it is intended to be a guide only, and no warranty is given as to the accuracy, currency or completeness of the information contained herein. It is not intended to be, nor should it be, relied upon as a substitute for legal or other professional advice. Formal legal advice should be sought in particular matters.*