

Mirror Wills versus Mutual Wills - key differences

Author: Kylie Johnson
Email: kylie@ealawyers.com.au
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When planning your estate, understanding the difference between mirror Wills and mutual Wills is essential. While both allow couples to make similar provisions for their assets, the legal effect, flexibility, and risks differ significantly.

This blog explains how each type of Will works, their advantages and disadvantages, and the key factors to consider when choosing the right option for your circumstances, particularly in blended families or where specific beneficiaries need protection.

Mirror Wills and mutual Wills; are they the same?

No. Although they have many similarities, they are not the same, so it's important to understand the differences and make the best estate planning decisions for you and your family.

What are mirror Wills?

Mirror Wills are typically created by spouses or de facto partners that are nearly identical in their terms. Each person's Will "mirrors" the other and contains reciprocal provisions such as leaving assets to the surviving partner and then to other beneficiaries, usually their children.

These are very common Wills used in NSW and provide flexibility so that each Will-maker can independently revoke or amend their Will at any time without the other's consent, provided they have mental capacity.

There's no legal obligation for the surviving Will-maker to maintain the terms of the Will after the first person's death. The survivor could create a new Will with different beneficiaries.

Example scenario

Harry and Sally, a married couple in Sydney, create mirror Wills. Each Will states that if one dies, their estate passes to the other, and upon the second spouse's death, the estate goes to their children. If Sally dies first, Harry inherits everything and is free to amend his Will later (e.g., to leave assets to a new partner or charity, etc).

What are mutual Wills?

Mutual Wills have similar characteristics to mirror Wills in that they are also created by two or more people (typically spouses or partners) with similar provisions. However, there's an additional legally binding agreement that the Wills **cannot** be changed or revoked without mutual consent, **even after** one testator's death.

Mutual Wills are more likely to be used in blended families where the couple may wish to ensure assets pass to specific beneficiaries, such as children from previous relationships.

Mutual Wills have greater complexity than standard mirror Wills, and there must be an intention that the Wills are irrevocable. This is usually by written agreement, but verbal agreements can be accepted by the court.

Example scenario

Mary and Frank, a de facto couple each with children from previous marriages, create mutual Wills. They agree that upon the first person's death, the survivor inherits the estate, and upon the survivor's death, the estate is divided equally among all their children. If Mary dies, Frank cannot change his Will to exclude Mary's children, as the mutual agreement creates an enforceable constructive trust.

What are the risks of a mutual Will?

- **Inflexibility** – the surviving person lacks the ability to amend the terms of the Will.
- **Reduction in control** – the surviving person is limited in their ability to deal with their own assets during their lifetime, such as selling property to pay for healthcare or other unforeseen costs.
- **Increased risk of dispute** – the surviving person may attempt to breach the agreement, leading to disputes with the other beneficiaries.
- **Costs** - disputes inevitably lead to legal costs, decreasing the value of the estate, which would otherwise be payable to the beneficiaries.

Can a mutual Will be revoked?

Yes, but only with consent from the other person whilst **both Will-makers are alive**.

One of the drawbacks of a mutual Will is the inability for the surviving person to alter their estate plan in line with their later circumstances. Family relationships can change dramatically over time, and a mutual Will made in contemplation of the person's current circumstances may not be the most suitable option many years down the track.

This inflexibility is often a deterrent for Will-makers to enter into mutual Wills. All relevant factors of the person's life should be considered, such as age, life expectancy, extent of their asset pool, lifetime provisions for beneficiaries, etc, before deciding whether a mutual Will is the best option.

Is there an alternative to a mutual Will that provides protection?

Yes. Mutual Wills are not appropriate for many Will-makers and their families. It's often the case that Will-makers do not completely understand the binding nature of these documents, and the possible implications for their families in the future.

There are other options, such as considering a Testamentary Trust Will, which offers greater flexibility and asset protection mechanisms for the Will-maker and beneficiaries. You can read more about this option in our earlier blog, "Benefits of a Testamentary Trust Will versus a simple Will".

Get help from an estate planning lawyer

As you can see, there are a number of options available when considering what's best for your specific estate planning requirements. From simple Wills to the more complex mutual Wills and Testamentary Trust Wills, it's always highly recommended to seek legal advice specific to your circumstances. Our estate planning lawyers can provide you with tailored advice to your unique situation.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

02 9997 2111

info@ealawyers.com.au

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