

What is a “mutual will”?

In some situations, people (usually married or de facto couples) may choose to enter into a binding contract to make their wills in a certain way and to restrict any changes to any will in their lifetime (and following the death of the first of them).

These are typically known as mutual wills.

Usually both people make a will in accordance with the contract at or about the time the contract is entered into. They covenant not to change the terms of their will unless they have the prior written consent of the spouse or de facto.

The objective of the exercise is to ensure that the bequests as specified in the wills are not changed under any circumstances, except with the prior written consent of both will-makers.

It sometimes happens that one of those persons may make a later will which is inconsistent with the contract, often without telling the other contracting party about their new will, or perhaps after the death of that person, in breach of that agreement.

Where the contract regarding the making of the wills has been properly drafted and is legally enforceable, persons affected by a breach of the contract may be entitled to make a claim for damages or other relief from the court.

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