

Estate Planning

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Acorn Lawyers Monthly Estate Planning Update



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Your Relationship

As financial planners and accountants, you will have a close and personal relationship with your clients. You will understand their blended families and the difficulties faced by your clients in these situations. Many lawyers do not adequately protect the interests of children from previous marriages. We are particularly experienced in estate planning issues with blended families and can provide quality documents that protect your clients' wishes.

We are always happy to discuss your clients and their issues with you to discuss collaborative solutions. We work with you to assist your clients.



Blended Families and Second Marriages - Contract for Mutual Wills and Enduring Powers of Attorney

James and Juliet

James (53) and Juliet (52) met two years ago at one of Carol's famous dinner parties. At the time, they had both recently divorced and 'hit-it-off' sharing their hate for marriage. Over the years, their love blossomed and they decided to give marriage a second chance.

They both had adult children from previous marriages, James with 3 daughters and Juliet with 2 sons. They wished to make new Wills providing for each other during their life, but they wanted to ensure each child received their due inheritance. It wasn't that they didn't trust each other, but they had been through ugly divorces and wanted peace of mind.

James and Juliet created mirroring Wills. After leaving their estate to each other, on the death of the second of them, the estate will be divided into two equal parts. One part is shared equally between James' 3 daughters and one part between Juliet's 2 sons equally.

A Contract of Mutual Wills was also signed by James and Juliet, providing that they would each not alter, revoke or amend their Wills without the other's consent. It also provided that the surviving spouse would not take any action to unfairly deplete the estate. E.g. on Juliet's death, James cannot obtain Juliet's consent to change the Will. James cannot cut out Juliet's sons and leave the estate to his daughters without breaking the contract. This way, Juliet has provided for James during his life, but has ensured that on his death her sons will receive their due inheritance.

Contract for Mutual Wills

Mutual Wills are Wills made pursuant to an agreement as to the disposal of property, where neither party may revoke, amend or alter their Wills without the consent of the other. This is a **Contract for Mutual Wills**.

However, a Will is always revocable, even if there is a Contract for Mutual Wills or the Will is expressed to be irrevocable. You cannot stop a person making a new Will. A breach of a Contract for Mutual Wills though gives rise to damages or other equitable remedies.

The Wicked Step-mother

Some years ago, I acted for Kellie who was cut out of her wicked stepmother's Will. Her

father and stepmother made Wills that provided firstly for each other and then equally for their children, but did not enter a written Contract of Mutual Wills. When Kellie's beloved father died, the wicked stepmother wasted no time rewriting her Will to remove Kellie, who she despised.

When the wicked stepmother died, her son Josh (who also despised Kellie) was left the entire estate. All Kellie really wanted was her father's antique cut glass, but Josh (acting as Executor) refused to give her anything.

I argued a Contract of Mutual Wills existed based on a brief conversation over dinner. One night, Kellie's father had said words along the lines of "dear, we are never going to change our Wills" to which she replied "no, of course not love". This was all that was needed. A Contract of Mutual Wills does not need to be in writing (but better if it is). The wicked stepmother has broken the Contract of Mutual Wills and Josh was forced to pay a substantial settlement in favour of Kellie.

Remedies

When a Contract of Mutual Wills exists, on the death of the first spouse, the surviving spouse essentially receives their inheritance subject to a trust in favour of those entitled on their death. If the surviving spouse later changes their Will, the beneficiaries of the Mutual Will can claim that their inheritance is held on trust.

If a Contract of Mutual Wills is broken while both parties are alive, there may be a damages claim.

Enduring Power of Attorney

James and Juliet also appointed each other as their attorney (to make financial decisions). They also needed alternative attorneys in case they could not act for each other. We recommended they each jointly appoint one child from each side of the family, i.e. Juliet would appoint one of her sons and one of James' daughters (James would do the same). As the appointment is joint, both attorneys must execute any transactions.

E.g. if Juliet dies first, her children must still sign off on any transactions as James' attorney. If we only appointed James' children as his attorneys, they could try to defeat the Contract of Mutual Wills by moving assets during James' life. While such transactions may possibly be defeated later, **preventive measures are always best!**

- Lindsay Stoddart, Director