Contract to Make Mutual Wills

David Murry Green
and
Jennifer Jene Green

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This Deed is a Contract to Make Mutual Wills and is between
David Murry Green
of 11 George St, Gladesville, New South Wales 2111 Australia
and
Jennifer Jene Green
of 12 George St, Gladesville, New South Wales 2111 Australia
who agree as follows:

What is the background to this agreement?

A. Jennifer Jene Green and David Murry Green

B. They wish to benefit each other in the event of their death, with fairness.

1 David Murry Green
In consideration of Jennifer Jene Green under this Deed, David Murry Green has signed a Will (a copy of Schedule 1). Subject to clause 5 David Murry Green will make provision for the property in the estate of David Murry Green that is not otherwise provided for by his Will. This is unless Jennifer Jene Green (or Jennifer Jene Green) consents in writing to David Murry Green making provision for the property in the estate of David Murry Green that is not otherwise provided for by his Will. Fortunately there is a way to put Mike’s mind at rest.

2 Jennifer Jene Green
In consideration of David Murry Green under this Deed, Jennifer Jene Green has signed a Will (a copy of Schedule 2). Subject to clause 5 Jennifer Jene Green will make provision for the property in the estate of Jennifer Jene Green that is not otherwise provided for by her Will. This is unless David Murry Green consents in writing to Jennifer Jene Green making provision for the property in the estate of Jennifer Jene Green that is not otherwise provided for by her Will. They then took the extra precaution of signing a Contractual Will Agreement. The Contractual Will Agreement stops them from cutting out the other’s children.

3 Annexure of Wills
David Murry Green and Jennifer Jene Green are annexed to each part of this contract.

4 Covenant not to discriminate
Each of David Murry Green and Jennifer Jene Green agrees, subject to clause 5, that except for meeting the expenses of maintaining the accustomed style of life (and that of
any dependants) each respective party will not do, or omit to do, anything with the intention of diminishing the estate.

5 Assets after death

This contract does not apply to assets acquired by Jennifer Jene Green after the death of the other party, or assets acquired from the estate of that other.

6 Who pays the costs related to making the Will?

The parties pay the costs of preparing, executing and witnessing their Wills as aforesaid (including any stamp duties paid and the remuneration of the legal practitioner of the party) and all other costs connected with the execution of the Will.

7 How are Notices given to parties?

Any notice or demand is deemed duly given if it is delivered personally, or if it is sent by prepaid letter post to the last known postal address of the addressee and is not returned undelivered.

8 What happens if one of the parties dies?

If any part of this contract becomes void or unenforceable by reason of death or incapacity of any of the parties, the obligation to perform as set out in this contract remains enforceable as to the survivor or successors in title of such party so far as it is severable.

9 What Laws Interpret this contract?

This contract is construed according to the law of the State of New South Wales and is to be construed according to the laws of the State as evidenced by their address at the beginning.

10 Dictionary

10.1 Words importing the singular number or plural number include the plural number and singular number respectively.

10.2 Words referring to gender include all other genders.

10.3 Words referring to persons include corporations.
10.4 Reference to the parties and the deceased Co-purchaser includes themselves, their legal personal representatives, beneficiaries, successors and personal representatives. You can build this document whether you are married or not. Also it makes no difference if your spouse is of the same sex, i.e. gay relationships are fine.

10.5 The headings used are for ease of construct the contract.

Signed, sealed and delivered as a deed on ... day of ............ 20 ...

SIGNED by David Murry Green

in front of the person below being over 18 years of age and not involved with the contents of this document or related to any of the parties to this document

Witness signature:

Witness name: (please print)

Witness address:

Witness occupation:

SIGNED by Jennifer Jene Green

in front of the person below being over 18 years of age and not involved with the contents of this document or related to any of the parties to this document

Witness signature:

Witness name: (please print)

Witness address:

Witness occupation:
Schedule “1”

Attached is an unsigned copy of the Will of David Murry Green
Schedule “2”

Attached is an unsigned copy of the Will of Jennifer Jene Green
Thursday, 14 April 2016

David Murry Green and Jennifer Jene Green
11 George St
Gladesville NSW, 2111

PRIVATE & CONFIDENTIAL

Dear David and Jennifer,

Contractual Will Agreement for David Murry Green and Jennifer Jene Green

Thank you for building your Contractual Will Agreement on our website. Attached is your Agreement and also two Schedules for you to attach unsigned copies of both your Wills.

Please read through your documents. When you are happy that your Agreement expresses your wishes, then you sign your document as follows:

Signing your Agreement

1. Find 2 people that are: over 18 years of age, of sound mind and have an address in Australia. The witnesses can’t be related to you or have any chance of being related to you (e.g. it can’t be your son’s girlfriend because your son could marry that person and then you would be related to the witness). The witness can’t be a person that is likely to get anything under the Wills that are the object of the Agreement. The best witnesses are “strangers” or the “next door neighbour”.

2. Get your 2 witnesses and yourselves in a room.

3. Ensure that you date the Agreement with the date at which the Agreement is signed and witnessed.

4. If you need reading glasses, then don’t sign until you put on those glasses.

5. If you have issues reading English, an interpreter may be required.
What is a Contractual Will Agreement?

Mike leaves everything in his Will to his second wife, Carol. She had children as well. Once Mike dies, Carol gets everything. What if she cut out Mike’s children from her Will? Mike loved his second wife and yet the fear of the unknown kept him up at night. Fortunately there is a way to put Mike’s mind at rest.

They created Wills where whoever died last leaves half to Mike’s children and half to Carol’s children. They then took the extra precaution of signing a Contractual Will Agreement. The Contractual Will Agreement stops them from cutting out the other’s children.

Mike died. Carol lived another 30 years. Mike’s fear that Carol would cut out his children was justified. After 20 years, Carol redid her Will, leaving everything to her own children and nothing to Mike’s children.

Mike’s children were able to enforce the Contractual Will Agreement with the courts and got not only half of Carol’s assets but also all legal costs.

How does a Contractual Will Agreement work?

This Agreement is a document between two people. This is often a husband and wife who each have children from prior relationships. They make Wills and want to ensure that their partner who survives them keeps their part of the bargain.

The courts honour these Agreements:

“a contract between persons to make corresponding wills gives rise to equitable obligations when one acts on the faith of such an agreement and dies leaving his will unrevoked so that the other takes property under its dispositions. It operates to impose upon the survivor an obligation regarded as specifically enforceable. It is true that he cannot be compelled to make and leave unrevoked a testamentary document and if he dies leaving a last will containing provisions inconsistent with his agreement it is nevertheless valid as a testamentary act. But the doctrines of equity attach the obligation to the property. The effect is, I think, that the survivor becomes a constructive trustee and the terms of the trust are those of the will which he undertook would be his last will.” *Birmingham v Renfrew* [1937] HCA 52
How restricted is the surviving partner?

The surviving partner is allowed to consume the assets but can’t give them away or waste them. They can’t act with the intention of defeating the agreement.

When does a Contractual Will Agreement become binding?

A Contractual Will Agreement becomes binding if either of the following two events happen:

a) One of the parties can no longer change the Will

b) One of the parties die

Are there any problems with Contractual Will Agreements?

Contractual Will Agreements are not flexible. They cannot be updated if circumstances change. Contractual Will Agreements can result in costly litigation to resolve disputes from those who expected to inherit. Contractual Will Agreements don’t guarantee that there will be any assets left when all parties have died.

If you have any questions about this document, please don’t hesitate to contact me.

Yours sincerely,

[Signature]

Dr Brett Davies, CTA, AIAMA, BJuris, LLB, Dip Ed, BArts(Hons), LLM, MBA, SJD
LEGAL CONSOLIDATED BARRISTERS & SOLICITORS