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Your Reference: Contractual Will Agreement
Enquiries: Adj Professor, Dr Brett Davies
Direct Telephone: 1800 141 612
Email: brett@legalconsolidated.com

Tuesday, 23 March 2021

Aaron Swenson
21 Hay Place
Subiaco WA 6008
Australia

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telephone us, we can help you
complete the questions.

Adj Professor, Dr Brett Davies - Partner

Dear Aaron Swenson and Lucy Swenson,

Contractual Will Agreement for Aaron Swenson and Lucy Swenson

Thank you for instructing us to prepare the attached Contractual Will Agreement

How to print your document

When you are satisfied that the document is according to your instructions please:

1. Download the PDF (Don't print directly from the browser.)
2. Print the PDF Printer settings: A4 paper
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document
(However, do not staple the covering letter to the document.)

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

5. Find a person who is: over 18 years of age, of sound mind and preferably have an address in Australia. The witness 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. The best witnesses are strangers or the next door neighbour.
6. Get your 2 witnesses and yourselves in a room.
7. Ensure that you date the Deed with the date at which the Deed is signed and witnessed.
8. If you need reading glasses, then do not sign until you put on those glasses.

9. If you have issues reading English, an interpreter may be required. Please telephone me, if this is the case.

What is a Contractual Will Agreement?

Example:

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 rewrote 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 couple 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 (e.g. dementia)
- B. One of the parties die

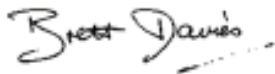
The parties agree as follows:

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.

This now concludes the matter. Thank you for your instructions.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD
National Taxation Partner
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This is a sample of the document you are building on our law firm's website.

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*Dr Brett Davies
Partner
Legal Consolidated Barristers & Solicitors*

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Adj Professor, Dr Brett Davies - Partner



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Contract to Make Mutual Wills

Aaron Swenson

and

Lucy Swenson

This Deed is a **Contract to Make Mutual Wills** and is between

Aaron Swenson
of 21 Hay Place, Subiaco WA 6008, Australia

and

Lucy Swenson
of 21 Hay Place, Subiaco WA 6008, Australia

who agree as follows:

What is the background to this agreement?

- A. Lucy Swenson and Aaron Swenson respect and love each other.
- B. They wish to benefit each other in their Wills but ensure that the assets are dealt with fairly.

A Contractual Will Agreement is not a Will. It is a contract between two living people not to change their Wills.

1 Aaron Swenson - Undertaking

In consideration of Lucy Swenson undertaking the obligations set out in this Deed, Aaron Swenson has signed a Will (a copy of the unsigned Will is attached in Schedule 1). Subject to clause 5, Aaron Swenson does all things necessary to ensure that the property in the estate of Aaron Swenson devolves in the manner provided by that Will. This is unless Lucy Swenson (or the legal personal representative of Lucy Swenson) consents in writing to Aaron Swenson acting otherwise.

2 Lucy Swenson - Undertaking

In consideration of Aaron Swenson undertaking the obligations set out in this Deed, Lucy Swenson has signed a Will (a copy of the unsigned Will is attached in Schedule 2). Subject to clause 5, Lucy Swenson does all things necessary to ensure that the property in the estate of Lucy Swenson devolves in the manner provided by that Will. This is unless Aaron Swenson or the legal personal representative of Aaron Swenson consents in writing to Lucy Swenson acting otherwise.

3 Annexure of Wills

Aaron Swenson and Lucy Swenson ensure that copies of the un-executed Wills are annexed to each part of this Deed.

4 Covenant not to diminish assets during life-time

Each of Aaron Swenson and Lucy Swenson 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 not protected

This Deed does not apply to assets acquired by the survivor of Aaron Swenson and Lucy Swenson after the death of the other of them, with the exception of assets acquired from the estate of that other.

6 Who pays the costs relating to this Deed?

The parties pay the costs of preparing, signing and stamping this Contract (and the counterparts, if any) and all stamp duties payable on this contract equally.

7 How are Notices given to each other?

Any notice or demand is deemed duly given if delivered personally, emailed or sent by prepaid letter post to the last known postal address of the intended recipient and may be signed by the person giving the notice or their solicitor or otherwise as may be agreed unanimously by the parties from time to time.

8 What happens if over time part of this Contract becomes unenforceable?

If any part of this Deed becomes void or unenforceable then that part is severed from the Deed. All other parts of the Deed remain in full force and unaffected by any such severance.

9 What Laws Interpret this Agreement?

This Deed is construed according to the laws of the State or Territory in which the parties have agreed to be bound. If the parties do not agree, they will be construed according to the laws of the State or Territory in which the first party to die resides at the beginning of the Deed.

10 Dictionary

- 10.1 Words importing the singular number or plural number include the singular and plural 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 includes themselves, their legal personal representatives, heirs, executors, administrators, beneficiaries, successors and permitted assigns.
- 10.5 The headings used are for ease of reference only and do not interpret or construct the contract.

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.

Signed, sealed and delivered as a deed onday of 20 ...

SIGNED by Aaron Swenson




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 Lucy Swenson




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.

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:





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Schedule "1"

Attached is an unsigned copy of the Will of:

Aaron Swenson



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Schedule “2”

Attached is an unsigned copy of the Will of:

Lucy Swenson
