

### **Mutual Wills - how do they operate?**

A recent case provides a rare opportunity to understand how they operate.

Mutual Wills are whereby two people each make identical Wills at the same time. They usually provide for each other and then on the second death, they state what is to happen.

They are very much like 'mirror Wills'. The one big difference being there is a binding intention not to alter the Wills on the first death.

In *Charles v Fraser* (2010), two sisters, who lived together, made identical Wills in 1991. They had no children of their own, and on the second death, the Wills made gifts to relatives of the sisters and close friends.

The first sister died in 1995, leaving her estate to her surviving sister.

The surviving sister made a new Will in 2006. The new Will disregarded the relatives of the sisters and instead benefited a friend, a Mrs Fraser.

The family relatives issued a claim against Mrs Fraser, claiming the Wills made in 1991 were 'Mutual Wills' and could not be revoked.

With the evidence before the Court, it concluded that the Wills were mutual, notwithstanding the fact that this was not specifically mentioned in the Wills. The provisions of the Wills made in 1991 were therefore enforceable. Mrs Fraser was required to pay back her inheritance.

### **Conclusion**

When making mutual Wills, it is important to understand that they are binding on both parties and are irrevocable. The solicitor acting should keep detailed notes clearly recording the parties' intentions.