

Can my partner and I have the one Will?

Whilst in theory you and your partner can have the one Will for both of you, in practice it is not advisable.

Your Will is a document that allows you to gift the property that **you** own at your death to the people or group of people or any other entity, (such as a charity, church club) that you want to give it to.

Since you can only gift ***your*** property, and not your partner's property, they will need to have their own Will to give their property to the people or entity that they wish to have and benefit from that property.

You can have what is termed a Joint Will and also Mutual or Mirror Wills.

What is a joint Will?

A joint Will is a Will that deals with the property of two or more people who make the Will in the one document.

The joint Will becomes operative as a separate Will of each person and on the death of each person will be admitted to probate as their Will at the time of death.

However joint Wills are unusual, impractical and not recommended. There is no real benefit in making a joint Will and legal practitioners will advise against making a joint Will.

What are mutual or mirror Wills?

Mutual or mirror Wills are Wills usually made by separate documents in which two people make and execute separate Wills conferring reciprocal benefits upon each other.

These Wills are commonly used where spouses or partners make mirror image Wills. In a marriage situation or where two people are in a de facto partnership, these mutual or mirror Wills are the most common. In essence the partner leaves all of their property to the other partner on their death and vice versa.

There is ordinarily nothing to prevent one party with a mirror Will changing that Will at any point.

This may often occur where people have had a previous marriage or de facto relationship and also a child or children from that relationship. When one party to the mirror Will dies, the other party may change their Will to benefit only their biological children; which would include the children from the previous relationship.

Can a mutual or mirrored Will be binding on both Will makers?

To establish a binding agreement relating to mutual or mirror Wills there must be some independent evidence of a contract between the people making the Wills.

An agreement relating to a mutual or mirror Will does not need to be a formal contract as such, although it is preferable if it is.

The agreement can be set out in the mutual or mirror Will itself referring to another document that has been drawn up, identifying the agreement between the parties not to change the Will after the death of the other.

Evidence to prove an agreement for mutual or mirror Wills must be clear and reasonable.

If no agreement was made to bind the mirror Wills and there is no indication within the Wills

themselves, when one partner dies, the surviving partner can change their Will. It’s important, if you wish mirror Wills to binding, that you seek legal advice to ensure they are properly drafted.

> Whilst in theory you and your partner can have the one Will for both of you, in practice it’s not generally advisable.

If you wish to make a mutual or mirror Will you should seek legal advice from a solicitor experienced in the area of **Wills and Estate Planning**.