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Trust Experience™

Joint Wills

Joint wills are wills that are signed by, and contain the testamentary dispositions of, more than one testator. They essentially function as two (or more) separate wills that have the potential to govern the administration of more than one estate. The will is revocable by either testator while both remain living or by the survivor after the death of the first testator.

While not a common estate planning strategy, joint wills are nevertheless valid in Ontario, provided that they otherwise comply with the formal requirements of the *Succession Law Reform Act*. Typically, the joint will is admitted to probate following the death of the first testator. If the joint will is not revoked by the survivor, a Certificate of Appointment of Estate Trustee With a Will can be issued in respect of the surviving testator's estate upon the joint will being proved. In order to do so, the second probate application should contain a certified copy of the joint will, together with a schedule identifying the Superior Court of Justice location in which the original joint will was filed and the Court File Number assigned to the first probate application.

A joint will may or may not be a mutual will. If there is no agreement between the testators that neither will revoke the joint will without the consent of the other, either testator can revoke the joint will by executing a new will. Complications may arise if one testator chooses to revoke the joint will while the other intends for it to remain in effect. In such cases, the original document should not be revoked by physical destruction and care should be exercised in ensuring that the joint will is not inadvertently admitted to probate after it has been revoked in respect of the estate of the joint testator who has revoked the will.

While generally not advisable due to issues that can arise in terms of probate procedure, revocation, and potential conflicts to the extent of any inconsistent instructions regarding the terms of the will from any of the joint testators, joint wills are nevertheless valid estate planning tools and their presence in itself may not unduly complicate the administration of an estate.