

What is a Statutory Will?

We all understand the importance of making a Will and yet most adults in England and Wales have still not done so. What happens if you need to make a Will or change an existing Will but no longer have the capacity (known as testamentary capacity) and understanding to do so?

The Court of Protection has powers under the Mental Capacity Act 2005 to authorise the making of a Statutory Will. This has the same effect as any other Will but is made with the authority of the Court following an application by an interested party. This could be a family member, beneficiary, attorney, deputy or any other person with an interest in the Will being made.



Why should a Statutory Will be made?

There are numerous reasons for making a Will:

- An existing Will may need to be changed due to changing circumstances, whether family or financially related.
- The family situation is complicated and you want to try and avoid a dispute after death or you may have doubts over the validity of an existing Will.
- You want to make sure the estate is dealt with in as tax efficient way as possible.
- Or it may simply be that a Will has never been prepared before. This may be the case for adults and will be the case for those who lack capacity when they are children. An application can be made once the interested party becomes 18.



The court application process

The application process is lengthy and time consuming but we have many years' experience of preparing and submitting such applications. We will instruct an appropriate expert to prepare a medical report assessing testamentary capacity and then work with you to prepare the application papers, draft a suitable Will and gather all the evidence in support. As specialist private client lawyers we also advise you on the tax implications of any proposal.

The Court has to be certain that the proposed Will is in the best interests of the person who lacks capacity. Their wishes and feelings are extremely important and we take the time to obtain these (wherever possible), as well as listen to your views and ensure these are all taken into account.

When money is involved then it is sometimes the case that the application becomes contentious. We will represent your interests robustly and fight hard for the right outcome. However, we always consider alternative means of resolving the dispute and look for cost effective solutions. It does not help anyone to keep fighting for the sake of it.

The team

For further information please contact a member of the team.



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