

**MAKING A STATUTORY WILL**

If a person has dementia, it is important that they organise their financial and legal affairs whilst they are still able to do so. This ensures that in the future, their affairs will be set up in a way that they have chosen. The person may want a friend or family member to help them with this. It is important to make sure that all important papers are in order and can be found easily.

Everyone should make a Will. A Will ensures that when a person dies, their money and possessions go to people of their choosing. People with dementia who wish to make or change their Will should seek legal advice from a solicitor as soon as possible.

People with dementia may still have “testamentary capacity” – in other words, the legal capacity to make or change a Will. The solicitor will make a decision about this, often after taking medical advice.

A partner, relative or close friend of the person with dementia may also want to make or change their Will. They may wish to leave some or all of their estate to people other than the person with dementia – for example their children. If a person wishes to leave some or all of their estate to a person with dementia, they should consider setting up a Trust to ensure that the assets are used in the best interests of the person with dementia. They should also check what effect a bequest will have on any state benefits that the person receives.

**Who can make a Will?**

Anyone over the age of 18 can make a Will provided (as stated above) they have what is called “testamentary capacity”. In broad terms, this means that the person making a Will must understand the nature of the document they are signing, what they own and roughly what it is worth, and the claims of those to be benefited by, or excluded from, the Will.

If someone does not have the mental capacity to make a Will themselves, an application can be made to the Court of Protection for a Will to be made on their behalf. The Court of Protection manages the affairs of vulnerable people and those who no longer have the ability to manage their own financial affairs. A Will made in this way is called a **Statutory Will**. Even if a Deputy is already in place, appointed by the Court of Protection, the Deputy will have no authority to sign a Will on behalf of the person whose affairs they manage and so a Court application is still required.

To the lay person, it is often surprising that the Courts assume to know how a person would want to dispose of their estate when that person cannot speak for themselves. It is generally assumed that we are free to dispose of our property as we wish and that no one can exercise this right on our behalf. The Courts therefore have a responsibility to ensure that the Statutory Will is appropriate to the circumstances and likely wishes of the person for whom the Will is being made.

### **What do I need?**

The application to the Court to execute a Statutory Will can be quite slow and involves a lot of paperwork. As well as completing the Court's standard application forms, the Court requires the following information:-

- A draft of the proposed new Will and copy of any existing Will
- Consents to act from the proposed Executors of the new Will
- A family tree
- A Schedule of Assets together with their current values
- A Schedule of net yearly income and expenditure
- A Statement of the needs of the individual, both current and future, such as care costs
- The resources of the proposed beneficiaries, if this is felt to be relevant
- Details of any tax implications of the proposals
- A Report on the medical condition and life expectancy of the individual in question

The Court may never meet the person on behalf of whom the Will is to be made, and so this information is required to give them as full as possible a picture of the person, their financial situation and their family.

### **Do I have to go to Court?**

Sometimes those making the applications are asked to attend a Court of Protection hearing. These hearings are designed to be less formal than hearings in other Courts, and the Official Solicitor usually represents the person for whom the Will is made.

### **What happens then?**

The Court aims to make the Will that the person would have made had they been acting reasonably, with competent legal advice. A Statutory Will can make any provision that could have been made by the person had they had capacity and so it cannot, for example, dispose of property abroad.

If the Will is approved by the Court, an Order authorising its signature, usually by the person who made the application to the Court, will be made. Their signature must be witnessed in the usual way, and the Will is then sent to the Court who will apply their seal to it. It is then a valid Will.

### **What if I don't need a whole new Will?**

If only minor changes are required to an existing Will, then an application can be made to execute a Statutory Codicil; the procedure is the same as the procedure for a Statutory Will.

As the application to the Court of Protection for a Statutory Will is complicated, it is advisable to seek proper legal advice. As always, we are here to help. If you have any comments or queries regarding anything contained within this article, or indeed, if you require any advice on Estates, Probates, Trusts, Inheritance Tax, Enduring Powers of Attorney or Lasting Powers of Attorney please do not hesitate to contact me.

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