

### Making a Statutory Will

It is possible to make a Will on behalf of someone else if they cannot do it themselves – this is known as a Statutory Will and would involve an application to the Court of Protection (“the Court”). Only the Court can approve the making of a Statutory Will.

A Statutory Will may be appropriate in a number of situations including if someone has a serious brain injury or illness or if they have dementia.

A capacity assessment will be needed to determine if the person lacks the testamentary capacity to make a Will themselves. This is a specific test which looks at whether the person understands what making a Will means and its effects, whether the person is aware of the extent of the assets that they own and also of which family members and friends might expect to benefit from their estate.

It is worth noting that just because someone lacks capacity to manage their own property and finances; this does not mean they also lack capacity to make a Will. The tests for capacity are different. Therefore, it is possible for someone who lacks capacity to manage their own property and finances to make a Will for themselves without needing to involve the Court. We act for many clients who are unable to manage their own property and finances due to a serious brain injury and some of those clients have gone on to make Wills themselves.

Making a Statutory Will can be complex so if one is needed then it may be helpful to obtain legal advice. An application to the Court involves completing various forms and documents as well as preparing a draft Will. The application will also need to include the capacity assessment. The Court will decide if a hearing is needed.

When considering a Statutory Will application, the Court will consider a number of factors such as those listed in section 4 of the Mental Capacity Act 2005. The person who lacks capacity to make a Will should be encouraged to participate in the process as much as possible. Ultimately, the Court must decide that making a Statutory Will is in the person’s best interests.

## Boyes Turner Newsletter Article

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Provided there are no objections to the application, a Statutory Will would normally take around six months to make. It is possible to make an emergency application to the Court for a Statutory Will if a person only has a short time to live. There is an application fee of £365 to pay. Other fees might be payable, for example if you obtain legal advice.

A Statutory Will can replace a Will made whilst the person still had capacity to make a Will if that Will is out of date or there has been a change in the person's circumstances.

If the person does not have a Will, the intestacy rules would apply. These rules set out how a person's estate should be divided.

### How can we help?

If you have any queries or questions about a Statutory Will then please contact our specialist Court of Protection team by email on [cop@boyesturner.com](mailto:cop@boyesturner.com)