

Statutory Wills - how we can help



“A person can only make a valid Will if she or he has ‘testamentary capacity’. This means that they must understand the effect of the document, the value of their property and the moral claims, if any, of family and other dependants.”

If someone does not have testamentary capacity, and either has not made a Will or has a Will which needs to be changed, it is possible to apply on their behalf to the Office of the Public Guardian for a Statutory Will to be made. If a Deputy or Attorney has already been appointed to safeguard the patient’s interests, the Deputy or Attorney may make the application. Alternatively, anyone who would benefit under the existing Will or under the intestacy rules may apply, for example a husband/wife or child of the patient.

The procedure

A written opinion must be obtained from the patient’s doctor, stating whether or not the patient has testamentary capacity.

If the doctor thinks the patient does not have testamentary capacity, an application can then be made to the Office of the Public Guardian. A fee is payable.

The procedure can be straightforward although it involves quite a lot of paperwork. From start to finish it takes approximately three to six months. If the Will is complex, there may be a hearing at the Office of the Public Guardian in London.

The court office will need the following:

- Evidence in the form of a legal document called an affidavit which we can prepare for you. As the court office will have little or no knowledge of the case, this should provide as much information as possible, such as:

- the patient's family tree
 - details of the patient's current assets
 - a statement of the patient's current and future needs, such as the cost of accommodation and care and any special equipment
 - information on the patient's present health and future health prospects
 - details of the resources of any proposed beneficiary
 - a clear explanation of any tax implications of the Will
 - details of the effect of the proposals on the patient's assets
- A copy of any existing Will
 - A draft of the proposed Will or codicil (which we can prepare)
 - The medical opinion
 - If executors are to be appointed, their written consent to the appointment

The court office will try to ensure that, as far as possible, the Will gives effect to the likely wishes of the patient.

Once the court office has read all the documents, an appointment for a hearing will usually be given. The court office may also approve the proposals on the basis of the paperwork alone.

If the court office approves the proposals it will direct that the statutory Will be drawn up. It can then be signed by the person who made the application.

The statutory Will is then returned to the Office of the Public Guardian who will seal it. The Will is then valid.



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