

## **STATUTORY WILL DISPUTES**

### **What is a Statutory Will?**

A Statutory Will can be made for someone who lacks capacity to make a Will. This involves an application to the Court of Protection. There are various categories of eligible people who could make the application. The Court will consider the best interests of the person on whose behalf the Will is made and give consideration as to what he would say in his Will if he had capacity to make one.

When making an application for a Statutory Will, all/any interested parties who would be interested in the estate must be informed of the application. At this stage, they can contest the application if they believe that it is unfair or unjust.

If you have received notice of a Statutory Will application which you believe to be unfair or unjust, we can assist with the process to enable you to contest the making of the Will or changing the conditions of the proposed Will and ensuring that your concerns are noted and considered.

The court would need to weigh up the application together with any objections and suggestions and has the power to amend the proposed Will accordingly.

### **Factors to take into account**

The Court must consider:

- The person's past and present wishes and feelings (and in particular any relevant written statement made by him when he had capacity);
- The beliefs and values that would be likely to influence his decision if he had capacity; and
- The other factors that he would be likely to consider if he were able to do so.

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The Court must take into account the views of:

- Anyone named by the person as someone to be consulted on the matter in question or on matters of that kind;
- Anyone engaged in caring for the person or interested in his welfare;
- Any Donee of a LPA granted by the person;
- Any Deputy appointed by the Court.

### **What are the benefits of a Statutory Will?**

The making of a Statutory Will avoids an intestacy situation or, if there is a previous Will which is out of date but cannot be changed by the testator because he lacks capacity, it avoids a distribution which the testator would not want to happen.

It offers certainty as a Statutory Will cannot be challenged for lack of validity. However, claims under the Inheritance (Provision for Family and Dependents) Act 1975 are still possible.

For more information or help please contact **Paula James** on 01903 222 108 or email [paula.james@thomaseggar.com](mailto:paula.james@thomaseggar.com) or by calling **Lloyd Junor** on 01903 222 103 or email [lloydjunor@thomaseggar.com](mailto:lloydjunor@thomaseggar.com)

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