

Statutory Wills and Gifts

A guide to understanding Statutory Wills and Gifts

Expert advice

When someone lacks mental capacity, and doesn't have a Will, dealing with Statutory Wills and Gifts can be a complex procedure for the Attorney or Deputy to deal with, as there are various rules and regulations involved.

The Court takes breaches of the rules regarding Statutory Wills and Gifts very seriously, and doing things in the wrong way could result in the Attorney or Deputy liable to pay the money back from their own pocket or could even lead to criminal penalties.

Slater and Gordon has a team of Court of Protection specialists who can provide expert advice and assistance when dealing with Statutory Wills and Gifts. We recognise that each family's needs are unique and we can provide quality, bespoke, advice that's tailor made to suit all circumstances.



What are Statutory Wills?

Making a Will is an important step for all of us, to ensure that our wishes are carried out after our death.

Most people are aware that in order to make a Will they must have the required mental capacity to do so, otherwise the Will could be challenged.

A person who lacks mental capacity is unable to make a Will on their own behalf and Attorneys and Deputies don't have the power to make a Will on their behalf either. Therefore, an application needs to be made to the Court of Protection to prepare a Statutory Will.

The Mental Capacity Act allows a Statutory Will application to be made on behalf of a protected party. These applications can sometimes be contested and it's therefore essential that the advice of an experienced Court of Protection practitioner is sought.

What about making gifts?

Those with mental capacity can decide exactly how to spend their money and when to offer gifts. However, a person who lacks mental capacity is unable to make these decisions about their finances.

Attorneys and Deputies may not have the power to make gifts out of the monies they are responsible for and therefore, an application would need to be made to the Court of Protection to make a gift.

How can Slater and Gordon help?

Slater and Gordon has a specialist Court of Protection team. Our experts can relieve Attorneys and Deputies from making applications for Statutory Wills and Gifts.

We support Attorneys and Deputies through all stages of the process of making an application and advise on all aspects including:

- the quality of evidence needed
- tax consequences and how to minimise these
- how and when the Official Solicitor will be involved
- the best way of drawing up the Will – when a Trust will be needed, and when should they be avoided
- how to deal with challenges from other relatives / friends
- whether there will be a court hearing, and if so, how to get the best result

We know that there are sometimes good reasons why a gift should be allowed and can help with this process so that it's legal and above board.

We have had a great deal of success in getting permission from the Court of Protection to make gifts by Attorneys and Deputies, for example:

- in financial planning, i.e. to minimise Inheritance Tax
- to recognise a family member's contribution to the care of a loved one
- to provide financial support for a family member in need

If you wish to speak to one of our Court of Protection experts about Statutory Wills and Gifts, please do not hesitate to contact us.

Please feel free to discuss your own position and concerns.
Contact your nearest office on:

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