

# APPLICATIONS TO THE COURT OF PROTECTION FOR STATUTORY WILLS & AUTHORITY TO MAKE GIFTS

## The Court of Protection

The Court of Protection (CoP) is a specialist court set up to protect the interests of those who cannot make certain decisions, because they lack mental capacity. The Court will consider a number of factors and any decision made on behalf of a person who lacks capacity must be done in their best interests.

**Sometimes, an attorney or a Deputy will want the Court to make a decision about an individual's finances that means that making a gift or new will is the most sensible option.**

## Making a will ('statutory will') or authorising a gift in the Court of Protection

An attorney or a deputy cannot execute a will or approve making large gifts without the approval of the CoP. When a person has lost the capacity to make a will or large gifts and it is considered necessary to make a will, an application needs to be made asking the CoP to approve that decision.

An attorney or deputy might want to consider a statutory will or gift where:

- A will has not been made previously the vulnerable person has never made a will before
- The value of the estate has changed; e.g. increased or decreased and the change will be important to the terms of the current will or gift
- Inheritance tax planning
- a beneficiary (or beneficiaries) under an existing will has died
- where an asset in the will has been sold to pay for care fees and someone who was to benefit will now lose out.

## Factors that the Court of Protection will consider

When considering a statutory will application, the CoP will try to encourage the vulnerable person to participate, and will look at a number of factors (set out in the Mental Capacity Act 2005) including:

- Past and present wishes and feelings
- The beliefs and values
- Other factors that the vulnerable person would be likely to consider if they were able to do so.

The CoP may take into account the views of those who are close to the vulnerable person, such as friends, families and carers as well as the attorney or deputy.

One aspect of the best interests' test is to take into account how the vulnerable person will be remembered after their death.

The CoP is most likely to allow a statutory will if the person who lacks capacity has never made a will, or if there has been a significant change in their circumstances, but certainly attorneys and deputies should ensure that they are clear on when the CoP needs to approve their decisions.

### **What's involved in making an application to the CoP?**

- The Attorney, Deputy or solicitor will need to complete a number of forms - including a witness statement and assessment of capacity form;
- The application is sent to the CoP;
- Family members or interested parties will be informed and consulted about the contents of the Will;
- There may be a hearing, if the CoP decide that one is required;
- If the application is approved the Will is signed and sealed by the CoP.
- However, it should be noted that applicants are required to submit a draft of the proposed Statutory Will, and also provide significant accompanying information, including detail about life expectancy, otherwise the application will be significantly delayed.
- Additionally, the Official Solicitor is nearly always appointed by the Court to act for P, and therefore their costs will need to be met. The usual rule is that the costs of other parties are also covered by P, but this can be deviated from by the Courts, so parties must be alive to this.
- The whole process can easily take six months to a year. If there is a need for greater urgency than this, then the application should be accompanied by a COP9.
- This process can be complicated and stressful, and family members can disagree. If that happens the CoP is likely to involve The Official Solicitor who will step in to represent the interests of the incapacitated person.

### **How can GL Law help you?**

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

**For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email [hello@gl.law](mailto:hello@gl.law)**

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