

## Statutory Wills for individuals who are mentally incapable

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A statutory will is a will that is made on someone's behalf, because they do not have the capacity to do so themselves. For example, a statutory will can be created when an existing will is out of date, where a person's existing will names beneficiaries who have since died or when a person does not have a will at all.

The Mental Health (Northern Ireland) Order 1986, allows an application to be made to the High Court for the execution of a statutory will.

The High Court will only make a statutory will after considering all the requirements of the patient. Case law has determined how the court will decide what terms the statutory will should include. The overriding principle is that the court intends to create a statutory will in the form of a will that the actual patient would make, if they were not mentally disordered. This is known as the 'substituted judgment' test.

Various individuals may be entitled to apply for a statutory will to be put in place in respect of a person who is mentally incapable. These include the person's controller, a beneficiary under any existing will, any person who would otherwise inherit if the patient died without a will, any person that the patient may be expected to provide for if they were not mentally incapacitated and any other person the court authorises to make the application.

Cleaver Fulton Rankin has significant experience and expertise in dealing with statutory wills.

Should you wish to discuss any of the issues raised in this article then please contact Alastair Rankin, Michael Graham or Naomi Gaston who will be pleased to advise you.

*Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.*