

Statutory Wills: Even a Will may not be final

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our services —
call or email today!**

Level 4 Culwulla Chambers
67 Castlereagh Street
Sydney NSW 2000
Australia

T +61 (0) 9231 4888
F +61 (0)2 9221 8201

gridigerlaw.com.au

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There are some circumstances that are out of your immediate control, even when you have made a *Will*. The court may authorise a *Statutory Will* should you suffer an injury as a result of an accident or mental disability.

A *Statutory Will* arises where the court authorises a *Will* or *Codicil* to be made altered or revoked for a person without testamentary capacity (*Succession Act 2006 NSW*). This means that when somebody becomes incapable of managing their own affairs, important legal steps must be taken to ensure that their care, welfare and administration of their financial affairs are managed in their best interests.

Unfortunate circumstances may arise where:

- A person may have made a will but loses testamentary capacity as a result of an accident or mental infirmity and cannot make a new Will to address the changed circumstances.
- A child that has acquired assets but may have suffered brain injury and is unable to direct where those assets are to go.

At this point it is deemed that the person is reasonably likely to be incapable of making a will and to never regain testamentary capacity.

In these circumstances medical evidence may be required to demonstrate whether the person has any understanding of their affairs or of testamentary issues. The information to be put to the court generally comes from a specialist professional to support the client's mental condition, typically sought from:

- Psychiatrist
- Consultant physician
- Clinical psychologist
- The patient's treating general practitioner

If the court orders a *Statutory Will* then intestacy may be avoided. The Court appointed *Will* might also prevent other litigation from being pursued by members of the family or carers.

We can assist in preparing the information required to support an application to the Court that the testator actually lacks testamentary capacity. This can be a complex and time-consuming process.