



Court authorised Wills for persons who do not have testamentary capacity (otherwise known as Statutory Wills)

Before granting leave to apply for an order under the *Wills Act 1997* (as amended) relating to a statutory Will, the court must be satisfied that:

- the person on whose behalf the Will is to be made, or revoked, does not have testamentary capacity; and
- the proposed Will or revocation reflects what the intentions of the person would likely to be, or what the intentions of the person might reasonably be expected to be, if he or she had testamentary capacity; and
- it is reasonable in all the circumstances for the court, by order, to authorise the making of the Will or the revocation of the Will for the person.

The persons who are entitled to appear at an application for leave (permission to go further) before a court include a legal practitioner representing that person, a power of attorney of that person, a guardian or administrator of that person or any other person who has in the opinion of the court a genuine interest in the matter.

This Act also states that if the court uses its discretion to make such a statutory Will, it will be deemed to be valid and will be admitted to probate.

Making an application for leave is complex and all parties interested should be given notice of the matter coming before the court. Parties involved in making the application, or on the other hand opposing the application, need to remember that cost orders may follow the event and the unsuccessful party may be burdened in paying costs.

"Pearce Webster Dugdales are experienced in this area and are qualified to provide advice to you."

Contact: Pearce Webster Dugdales, Level 4, 379 Collins Street, Melbourne.