

What is testamentary capacity and when is it required?



What is testamentary capacity?

In order to make a valid Will a person must have testamentary capacity. This means that they must:

- understand that they are executing a Will and the effects of this Will;
- understand the extent of the property of which they are disposing;
- be able to comprehend the claims to which they ought to give effect; and
- not be suffering from any disorder of the mind.

A testator is not required to have an in-depth legal understanding, or to recall their assets with a high degree of precision, it is not a test of memory. What is required is that a testator, in general, has the capacity to understand the effect of their Will, and make their own judgements over competing claims to the estate.

A 'disorder of the mind' may arise from illnesses such as dementia, schizophrenia or depression or may be caused by alcohol or drug abuse. There is, however, no requirement that the disorder arises from an identifiable or medically recognised cause. In order to invalidate it, the disorder must have caused the dispositions in the Will.

When is testamentary capacity required?

The testator must have testamentary capacity at the time of executing their Will.

The only exception to this is where the testator had testamentary capacity when giving instructions for their Will



but did not have capacity at the date of execution. In this case the testator must know that they are executing a Will for which they had previously given instructions.

The instructions must continue to reflect their intentions as at the date of execution and the Will must give effect to their instructions.

Testamentary capacity may not be permanent. For example, someone who generally lacks capacity but experiences 'lucid intervals' where their capacity is regained, may be able to validly execute a Will during this interval.

In these cases the burden is on those who wish to propound the Will to prove that the testator did have capacity during this interval and that the execution took place at that time.

How we can help

For more advice on contesting a will, please contact our [specialist team](#).



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Partner