

The Friendly Trust

Yr Ymddiriedolaeth Gyfeillgar

Serving Cardiff and The Vale

Canton House, 435 Cowbridge Road
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Registered Charity No: 1084265

People with learning disabilities making a will

In order for someone to make a valid Will they have to have what is known as 'Testamentary Capacity'. There are **three** things that the person making the Will **must** understand:

- (1) The nature of the Will and its effect (who they want to have their 'property' i.e. any money or possessions including a house after their death, and what this means.)
- (2) What they have to leave in the Will (realise and recollect the extent of the property there is to dispose of.)
- (3) The nature and extent of the claims upon the person making the Will (both of those included in the Will and those *excluded* from the Will.) To be aware that there are people who would normally have a claim on that person's estate – even if they intend to leave them nothing.

*i.e. the implications of **making** and **signing** a Will have to be understood.*

A solicitor before drawing up a will for somebody will assess the situation. If they do not believe the person has the capacity they will not continue, as the Will could be contested. If they are unsure they will seek a medical opinion.

If somebody does not have the capacity to make a will, nobody can make a will for them, unless that person's financial affairs are being looked after by the Court of Protection. If there is no Will the rules of **intestacy** apply. These state who and in what order should inherit. In the event of their being no such relatives the matter has to be referred to the treasury solicitor who will advise what has to happen.

The Friendly Trust recommends that you check with a solicitor that this information is up to date at the time you make your will - or that you contact the Friendly Trust at the above office.