



## CORNERSTONE WILLS

### **BRIEFING NOTE – TESTAMENTARY CAPACITY TO MAKE A WILL**

If you or your client (the 'Testator') wishes to make a Will whom you, or others, suspect of lack of testamentary capacity (see below), then the following points should be taken into consideration:

- The (family) doctor should be present during the taking of the Will instructions;
- The (family) doctor should sign the instruction form after it is completed and has been signed by the instruction taker and the Testator;
- The (family) doctor should be invited to include next to his/her signature on the instruction form some wording along the lines of

*"It is my professional opinion that, at the time of giving the instructions, the Testator was of sound mind and able to appreciate the effects of his/her instructions and how this would be conveyed and take effect in the Will itself";*

- The (family) doctor should then appear as a Witness to the Will;
- There should be a letter written by the (family) doctor which should then be kept with the Will, along the following lines

*"I am satisfied that, at the time of the signing of the Will dated xxxxxx that the Testator is of sound mind and mental capacity. I am also satisfied that he/she has understood the act and its effects, and appreciates that he/she is executing a Will that gives effect to his/her instructions, has also understood the extent of the property of which he/she is disposing, and is able to comprehend and appreciate the claims to which he/she ought to give effect and that no disorder of the mind nor insane delusion has influenced his/her execution of this Will";*

- If the Testator has made an earlier Will this should be considered by legal and medical practitioners and if appropriate discussed with the Testator as to the reasons for the making of a new Will;
- The instructions should not be taken in the presence of anyone who may stand to benefit from the Will or who may have influence over the Testator;
- Notes should be taken at the time that all the above was done and signed and dated by all parties present as a record should it later be called in evidence.

**IF THE DOCTOR WILL NOT SIGN AND WITNESS AS ABOVE, THEN YOU SHOULD NOT TAKE THE WILL INSTRUCTIONS WITHOUT FURTHER ADVICE FOR YOUR OWN PROTECTION**

If in doubt, get professional advice – call us!

### **Cornerstone Wills**

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