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## CAPACITY FOR MAKING A WILL

A Will provides you with the ability to dictate how you wish for your estate to be distributed after your death (subject to the legislation).

A large number of people do not like to think about their death or what will happen after their death. The consequence is that people put off making or updating their Will, until an event such as illness or an accident occurs.

However putting off making or updating your Will, may mean that when you finally decide to do so, you may have diminished mental capacity. A likely consequence of having diminished mental capacity is that your Will is declared invalid and set aside.

If your Will is set aside, then:

- (a) Your estate will be distributed in accordance with any prior Will; or
- (b) If there is no prior Will, your estate will be distributed in accordance with the legislation.

### **So when does a person have mental capacity?**

A person has capacity when they:

- (a) Understand that they are making a Will, which will determine how their estate is to be distributed after their death;
- (b) Are able to recall the property they own; and
- (c) Understand that potential claims

that could be made against their estate.

Take the example of Bill and Mary, Mary recently had a stroke which has affected her memory. Since the stroke Mary has had trouble remembering where she is. For example she quite often thinks they still live in the family home rather than the rest home, and has difficulty recognizing her family.

After Mary's stroke, Mary and Bill decided they should have Wills in place. So Bill and Mary went to their solicitor and executed their Wills. Since at the time her Will was executed Mary could no longer remember that her and Bill do not own their family home, she lacks mental capacity. So her Will is not valid and will be set aside.

The moral of the story is that you should make a Will while you are in sound mind because you never know what might happen.

At Collins and May we suggest that you should consider reviewing your Will whenever your circumstances change, for example buying a property, having a child, getting married etc, to ensure that your Will reflects your current wishes.

**20 MINUTE FREE**

**WANT to review your Family Trust structure? THEN call us and take advantage of our 20 Minute Free interview**