



Will for the benefit of people who are vulnerable

48 High Street Lymington
Hampshire SO41 9ZQ
T. +44 (0)1590 625800
The Old Bank House
5 High Street Milford on Sea
Hampshire SO41 0QF
T. +44 (0)1590 642172
www.mooreblatch.com

Thinking about wills is not always easy and for those who have a potential beneficiary who is unable to lead a full life because of a mental or physical incapacity special care is needed in how provision is made in a will.

- The beneficiary may be receiving means tested support from either the Benefits Agency (Department of Social Security), or from the local authority. Usually we are asked to ensure the provision of the will does not lead to such support being withdrawn.
- The beneficiary may be incapable of handling sums of money and a way must be found of ensuring funds are available, but without the need for a Receiver to be appointed.
- If the provisions are not carefully balanced, the local authority acting for the beneficiary may make an application under the Inheritance (Provision for Family and Dependents) Act 1975 for the terms of the will to be changed.

Community Care

The Social Services Department is now the lead source of public funding for care and is entitled to seek such contribution from the beneficiary as is considered reasonable. Authorities are likely to become increasingly vigilant in ensuring a beneficiary of an estate in their care has been adequately and reasonably provided for in the will.

General Strategy

If the beneficiary is not to receive significant sums of money but there is to be a fund available for his/her benefit then a Trust must be established in the will. There are particular inheritance tax and capital gains tax dispensations for special trusts established for vulnerable persons, but our experience is that restrictions imposed on the potential use of the funds to gain the dispensations are not always attractive; particularly in the ordinary family situation where the vulnerable beneficiary is one amongst a group of children who should benefit.

Strategy

First decide the overall objectives and priorities. You may be happy to provide the beneficiary with the fullest possible financial support regardless of the effect on means tested benefits. Alternatively you may be more concerned about the preservation of those benefits. Our experience is that in making the will you are likely on the one hand to want the peace of mind of knowing the beneficiary will be provided with every possible care, but on the other you probably do not want the free availability of funds to the beneficiary to result in loss of benefits.

Balancing the Beneficiaries

In the normal family situation a decision must be made about the share of the estate to be allocated to the vulnerable beneficiary. Sometimes parents say the only fair course is to divide the estate into equal

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shares for all the children with the share for the vulnerable child going into a trust.

Some parents express a view that the needs of the vulnerable child are greater than those of the other children with the result that a higher share of the estate is placed in a trust.

It is sometimes said that the other children have already been deprived as a result of the special need to satisfy the demands of the vulnerable child so they should be compensated by receiving a larger share of the estate.

An overriding consideration is that if the share placed in the trust is regarded by the local authority as being wholly inadequate for the beneficiary's needs, or in relation to the size of the estate, then it may bring an action on behalf of the beneficiary for the terms of the will to be amended.

Whilst there are no easy answers, it is crucial that your wishes as to how you would like matters to be arranged are committed to paper if they are to be carried out.