

ROYAL COURT OF JERSEY

RC22/04

THE CAPACITY AND SELF-DETERMINATION (JERSEY) LAW 2016

**Making and executing a will when P does not have capacity to execute a will;
and**

**Making and executing a will where P is under a delegation but has been
assessed as having capacity to make and execute a will.**

Introduction

1. Article 28(3)(b) of the Capacity and Self Determination (Jersey) Law 2016 (“the Law”) provides:-

“(3) Only the Court (and not a delegate) may exercise, in accordance with the further requirements of Articles 30 and 31, power in relation to – ... (b) the execution for P of a will; ...”.

2. Pursuant to Article 30 of the Law (see below), the delegate applies to the Court for authority to execute a will on P’s behalf.

Article 30 (Powers of the Court in relation to wills) provides:

“(1) The power of the Court under Article 28(3)(b) extends to making any provision (including, but not limited to, the disposal of property or the exercise of a power) which could be made under a will executed by P if P had capacity to do so, and subject to paragraph (2), such provision shall have effect for all purposes as if it were provision made by a will validly executed under Jersey law by a person with capacity to do so, and subject to paragraph (2), such provision shall have effect for all purposes as if it were provision made by a will validly executed under Jersey law by a person with capacity.

(2) Paragraph (1) does not apply to the extent that –

- (a) a will disposes of immovable property outside Jersey; or*
- (b) at the time when the will is to be executed, P is domiciled outside Jersey and any question of P’s testamentary capacity would fall to be determined in accordance with the law of P’s domicile.*

(3) For the purpose of the exercise of the Court’s power under Article 28(3)(b) and this Article, the Court may make an order or give directions authorising any person (whether appointed as a delegate under this Part or not) to execute a will on behalf of P.

(4) *Such an order or directions as mentioned in paragraph (3) shall include the requirements that the will executed on behalf of P must –*

- (a) state that it is signed by P acting by the authorised person;*
- (b) be signed by the authorised person with the name of P and that person's own name, in the presence of no less than 2 witnesses;*
- (c) be attested and subscribed by those witnesses in the presence of the authorised person; and*
- (d) be sealed with the official seal of the Court."*

Capacity

3. The Court must be satisfied whether P lacks capacity for making a will, bearing in mind that any lack of capacity can in theory be permanent or temporary and that in theory a lack of capacity may exist in relation to some conduct but not in relation to others.
4. Article 4(4) of the Law states that the question as to whether or not a person lacks capacity is to be decided on the balance of probabilities.

Where P has been assessed as lacking capacity to make and execute a will, bringing an application to Court

5. Where P has been assessed by a registered practitioner (i.e., a general practitioner, psychiatrist or psychologist) as not having capacity to make and execute a will themselves but where the delegate believes that it is in P's best interests for a will(s) to be executed on their behalf, the delegate may bring a simple application to Court, pursuant to Article 30 of the Law.
6. The full facts of the application must be set out on the DP02 form. Supporting documents must be appended to, and forms part of, the application form in the usual way and must include a copy of the draft will(s) or codicil to be executed.
7. Pursuant to Article 30(4)(b) of the Law, a will that has been approved by the Royal Court of Jersey to be executed on behalf of P should include a signature block. The form of signature block and attestation is set out below:

“This Will is signed by [full name of P] acting by [name of the delegate] who hereby certifies that this Will is an exact copy of the draft will as [amended and] authorised by the Royal Court of Jersey on [date] pursuant to Article 30 of the Capacity and Self-Determination (Jersey) Law 2016 this [] day of [] 202[.]”

[Delegate to pen P's name]
Signed
Ps name

[Delegate's signature]
Signed
The delegate's name

This Will was signed, declared and acknowledged by [name of delegate] on behalf of [full name of P] at [St Helier] in the presence of us both present at the same time throughout on the date above written.

First witness

Signature

Full name

Address

.....

.....

.....

Profession

Second witness

Signature

Full name

Address

.....

.....

.....

Profession

Sealed with the official seal of the Royal Court of Jersey on [] day of [] 202[.]”

8. Once the will has been executed, it should be delivered to the Probate and Protection Division of the Judicial Greffe so that the Royal Court seal can be affixed to it.
9. The Judicial Greffe will take a copy of the executed will and place it on Ps delegate folder.

Where P is believed to have capacity to make and execute a will notwithstanding that they have been assessed as lacking capacity to manage their property and financial affairs themselves and is under a delegation.

10. Where P is under a delegation for property and affairs and where P's delegate believes that P has capacity to make and execute a will, the delegate should seek a capacity assessment carried out by an independent registered

practitioner (the “Assessing Practitioner”) - that is, for this purpose, a general practitioner (not Ps usual general practitioner), a psychologist or a psychiatrist as to whether or not P has capacity for making and executing a will.

11. Where the Assessing Practitioner assesses that P has capacity to make a will, a law firm may prepare draft wills in accordance with Ps instructions.
12. The Assessing Practitioner must be one of the witnesses to the execution of the finalised will, thereby attesting that P continues to have capacity at the time of execution.

This practice direction is effective immediately.

8 November 2022