

Non-Cupative Wills



In the early modern period Wills were often made when the testator was “nigh unto death”. Luckily, at this time, “The liberty of making a testament doth continue even until the last gasp” according to Henry Swinburne in his “A Briefe Treatise of Testaments and Last Wills, 1596”.

If it was too late to make a written Will testators could recite their last wishes on their deathbed in the form of a spoken Will, technically called non-cupative Will.

Until the law was changed in 1837 these spoken Wills made up almost a third of all probates!

As long as the dying man had been resident at the place of death for at least ten days, and spoke his last wishes in the presence of three witnesses, the written account of his words were deemed to be legal even though the Will was not signed by the testator.

These Wills can paint a vivid picture. One held by the Salisbury Diocesan Probate collection reads as follows:

“James Lucas late of Reading, victualler, died...of the Dropsie (his death being more sudden than was expected by his Physicians...) and about half an hour before his Death...We [the witnesses] saw him...take hold of his...brother by the hand and with great Earnestness Express these words following...” he continued “For Christ sake take care of my Child and be a father to it and take it as your own for I shall die. Pay every one their own...and make a small Burying”.

Non-cupative Wills continued to be legal only for military personnel on active service.

Death bed Wills in a **written** and attested format can still be valid and binding although a hastily drawn Will made close to death is **more likely to be challenged** by a disappointed beneficiary on the grounds that the testator lacked mental capacity or was subjected to undue influence.

This is particularly a problem where the death bed Will differs substantially from a previous Will.

It was reported in 1900 that a wealthy gentleman had two Wills produced at his deathbed, one in favour of his nephew and one to his other 76 relatives, and chose which one to sign just moments before his death. In circumstances where a death bed Will is necessary it is advisable to get a medical professional to witness the Will so that capacity and validity can be proved should a challenge be raised.

As 70% of the UK population still do not have a valid Will, we the English Will Company strongly recommend that clients protect themselves and their families as soon as they can and they should not leave it to last minute death bed planning – it might well prove to be too late as with poor old James Lucas!