

Legal Capacity Required Chart

| Transaction | Legal Capacity Required |
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| Last Will and Testament | Under O.C.G.A. § 53-4-11(a), a testator, in order to have testamentary capacity, must have a decided and rational desire as to the disposition of his or her property. Further, an otherwise insane individual may make a will during a lucid interval. |
| Durable Power of Attorney | Under O.C.G.A. § 10-6B-2(5), "Incapacity" means inability of an individual to manage property or business affairs because the individual: (A) Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or (B) Is: (i) Missing; (ii) Detained, including incarcerated in a penal system; or (iii) Outside the United States and unable to return. |
| Health Care Treatment | Georgia Code requires that a person must be of "sound mind" to sign an Advance Directive for Health Care and consent to or deny health care treatment. While the O.C.G.A. does not explicitly define the term "sound mind" as it relates to health care, generally the determination of whether a person can make his own medical decisions is determined by his doctor. Much like testamentary capacity, an attorney will want to determine that a client understands the potential material benefits, risks, and alternatives involved in a specific proposed health care decision. |
| Real Estate Conveyance (deed conveyance) | For a deed conveyance, the grantor must have the capacity to enter into a contract to make a binding conveyance Further, the deed of an insane [or mentally incompetent person] though made without fraud and for an adequate consideration, may be avoided by his heirs, not only against his immediate grantee but also as against bona fide purchasers for value and without notice of such insanity. <i>Thornton v. Carpenter, 476 S.E. 2d 92 (1996)</i> |
| Gifting | Under O.C.G.A. § 44-5-80(1), a person must have the intent to make a gift. While intent is not defined in the code, Courts have held that a person may "lack sufficient capacity to make responsible decisions about the management of ... property." <i>In re Cochran, 314 Ga. App. At 188-89</i> |
| Revocable Trust | Under O.C.G.A. § 53-12-23, A person has capacity to create an inter vivos trust to the extent that such person has legal capacity to transfer title to property inter vivos. A person has capacity to create a testamentary trust to the extent that such person has legal capacity to devise or bequeath property by will. |