



CARERS FACT SHEET 7

Legal Issues

If someone close to you has a condition likely to deteriorate, it is only natural to be reluctant to discuss delicate matters such as wills and finances. You need to remember, though, that sorting things out sooner rather than later will lead to a far easier situation in the long run and allow the person you care for to have a full say in their future.

It is also important to talk about these matters with other members of your family so that everyone is clear what will happen in the future. Don't be afraid to tackle the issues outlined here, as you need to be sure you are acting in everyone's best interest.

Wills

Your local Citizens Advice Bureau (you can find a list in Yellow Pages) can put you in touch with solicitors specialising in the making of wills, and you should make sure that the person you care for has made a will. If there is a will, then the likelihood of family disputes and difficult situations arising later is greatly reduced. It can also save you expensive legal bills.

You should consult a solicitor if you are concerned about any legal matters (they are listed in the Yellow Pages). If you, or the person you are caring for, is an older person, you may prefer to contact a Solicitor for the Elderly who specialises in legal matters for older people. For details of local members, contact or email: admin@solicitorsfortheelderly.com or www.solicitorsfortheelderly.com

Enduring Power of Attorney

A General Power of Attorney is when someone is nominated to handle the affairs of the person you care for and ends when the person becomes mentally incapable. It is renewable annually. An Enduring Power of Attorney stays effective until death unless specifically revoked.

It is no longer possible to appoint an Enduring Power of Attorney but any made before 01 October 2007 remain valid. It must be registered at the Office of the Public Guardian when the donor becomes mentally incapable but maybe used before this under the donor's own supervision.

Lasting Power of Attorney

From the 01 October 2007 the EPA is no longer available and you will need to complete a Lasting Power of Attorney either for :-

1. finance and property
2. personal health and welfare

Forms for both types are currently available from the website of the Office of the Public Guardian, together with guidance notes and booklets. At the time the Lasting Power of Attorney is made, a certificate is required confirming that the donor has mental capacity, is not under duress, and understands the nature and purpose of the document. Certain professionals may act as certificate provider or otherwise someone who has known the donor for at least two years. The Lasting Power of Attorney must be registered with the



Office of the Public Guardian before it can be used, whether the donor retains capacity or not. There will be a searchable register of Lasting Power of Attorney's available.

Court of Protection

The Court of Protection takes decisions concerning the financial affairs of people who do not have the mental capacity to do this for themselves. One way it does this is to appoint deputies who carry out the specific action. Permission is required for all major decisions until the individual loses capacity when management of their financial affairs generally will be granted.

The Court of Protection is only used when a person becomes mentally incapable and has not previously assigned someone to act on his/her behalf. The Public Guardian oversees supervision of deputies appointed by the Court of Protection. It also deals with registration of Enduring Power of Attorney's and Lasting Power of Attorney's.

The Public Trust Office

The Public Trustee is responsible for the supervision of receivers appointed by the Court of Protection. It can appoint the court as receiver in those matters if there is no one willing or suitable to act for someone.

Guardianship under MCA 1983

Guardianship is legislation which enables people to receive care and medical treatment outside of hospital but with close supervision and control. Guardianship empowers the guardian (usually the social care department) to require a person to live at a specified address, attend medical treatment or an activity and be seen by a doctor or approved social worker.

Living Wills

Living Wills at present only have power in Common Law but many of the wishes expressed can be taken into account by medical staff if you or the person you care for becomes incapable of making decisions or making sure your wishes are known. A draft living will form is available on request. Please note from 01 October 2007 you will be able to complete a Lasting Power of Attorney for this which will override any prior Living Will provided the relevant section of Lasting Power of Attorney is completed. A Living Will completed after a Lasting Power of Attorney should be followed by the attorney.