

## **A WILL FOR THE LIVING**

Most people who have reached the age of reason know what a Will is and the importance of making one. But a Will only takes effect on Death...

## **LIFE BEFORE DEATH**

What most people do not consider, however, is how their affairs, both financial and personal, would be managed in the event of their becoming mentally incapable of doing so for themselves. Such a disastrous situation can come about at any age without warning through Alzheimer's, Dementia, Stroke, or Acquired Brain injury. Such a state can leave you in a situation where you cannot write a cheque, draw money from a bank, pay a bill, deal with other property or decide what care you may need or where you may wish to live. Thus for anybody who does not have the bulk of their funds in joint names with another, or others, who have power to draw on those funds, life could become very cruel and impossible. Banks nowadays and for some years past no longer allow family members to access funds of an incapacitated person. Your hard earned wealth may be frozen while you are deprived of the comforts, specialist care, or equipment necessary to make your life more pleasant in such trying circumstances.

Up to 1996 the only solution to this problem was an application to the President of the High Court to make the afflicted person a Ward of Court. A Committee appointed by the Court took over the running of that person's financial affairs and other needs. This was an inflexible, slow, costly and user unfriendly system.

## **POWERS OF ATTORNEY ACT 1996**

This legislation enables you, when you are in the fullness of your mental health, to appoint somebody or a number of persons to care for you if you reach a mental stage where you can no longer do so yourself. You have the advantage of being able to appoint trusted friends or family members. You can give the people so appointed (the attornies) as wide powers as you wish. You can decide now, with the benefit of full mental capacity, what decisions your attornies should be able to make relating to:-

- (a) where you should live,
- (b) with whom you should live,
- (c) whom you should see and not see,
- (d) what training or rehabilitation you should get,
- (e) your diet and dress,
- (f) inspection of your personal papers,

(g) housing, social welfare and other benefits for you.

This list is not exhaustive and in addition you can give your attorneys power to sell some or all of your assets, including your family home, to pay the cost of maintaining you in the fashion to which you have become accustomed.

**NB.** You can of course also place restrictions on your attorneys as to what they may not do e.g. sell the family home.

## **SAFEGUARDS**

---

- (1) A solicitor and your own doctor must verify that you are fully aware of what you are doing when appointing the attorneys.
- (2) You nominate two people, independent of the attorneys, one of whom must be your spouse, or if you are a widow/widower one of your children or otherwise some other relative. The other can be another relative or friend. These people must be formally notified when you have signed the enduring power of attorney and the attorneys identified to them (see why below).
- (3) The appointment has no effect for as long as you remain able to manage your own affairs.
- (4) If the attorneys decide that you are no longer able to manage your affairs they must register the power of attorney in the High Court and must, prior to registration, notify the two nominees of their intention to do so. The nominees have the opportunity to object to the registration, to protect your interests, if they believe that you are still capable of managing your own affairs. The enduring power of attorney does not take effect until registered.

If you lose the ability to look after yourself then the attorneys you have appointed can use your income and assets to ensure that you can continue to enjoy the benefits of what you have worked hard for all your healthy life and to ensure that your quality of life, financially, socially and otherwise is as good as you would have provided for yourself within the range of powers you have given to them.

If you want to protect yourself in the unforeseen and unpredictable future come and talk to us soon.