THE McKINSTRY COMPANY

A LAW FIRM FOR LIFE

A Guide to **Residential Care**

What you should be thinking about and planning

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Things you **should do now**

Appoint someone as your attorney

If you need to go into residential care then it is likely that you will also need help with managing your affairs. You can appoint someone to do this for you today. It can take effect immediately or be delayed until you need help.

This means that you choose who should help you to make decisions and it will make things easier for you and your family.

Make your will

It is important that you make sure all of your affairs are in order. By making your will you are making the choices and not allowing the law to decide for you.

Residential **care**

If you or a member of your family has to go into residential care the local authority will look into whether you ought to pay for part of your care.

The rules that they will apply are very complicated. This is a summary and you should contact us for specific advice about your personal circumstances.

What the local authority will pay

If you need to go into residential care the government will pay some money towards your personal care and your nursing care, but this is will not cover all the costs.

No one wants to think about themselves or a member of their family going into residential care. It is very upsetting for all of the family when someone can no longer look after themselves at home and need to go into residential care.

To take away some of the stress there are some things you should be thinking about and putting into place well in advance to ease the process. This leaflet tells you about what you should be thinking about in advance, what the rules are on paying for residential care and how you can protect your family home.

Call our Wills & Estates Team on **01292 281 711**

If the fee for the nursing home is more than the government will pay, then the local authority will look at how much money and other assets, including your home, you have and will tell you how much you will pay. This is called a “Financial Assessment”.

How do they decide how much you have to pay?

The Financial Assessment form will ask you about how much income and capital you have. Your income includes your state pension, employer pension and any other income.

Your capital includes any savings that you have and also the value of your house. The value of your house will not be taken into account if your spouse or another dependent relative is still living there.

Every year the government says how much money you can have before you have to pay for care. The amounts change every year.

If you have less than the lower amount you will not have to pay anything towards your care but if you have more than the higher amount you will have to pay for all of your care. Between the two figures you will have to pay some but not all of the costs of your care.

Can you protect the value of **your family home?**

We often hear of people being advised to transfer their family home to a trust to avoid its value being taken into account in the Financial Assessment.

If you are going to do this you should know that if the only reason for the house being transferred is to avoid paying for care then the local authority can investigate the transfer and still regard the value of the house as belonging to you for the Financial Assessment.

If the transfer is within 6 months of you going into care they can have the transfer set aside. If it is before that they will pay the care costs but recover the money when the house is sold.

If there are other reasons for you wanting to transfer the house, e.g you want your children to have the security of the house or perhaps one of them lives with you and cares for you then there would be another reason for the transfer and the value of the house may be excluded from the Financial Assessment.

Option 1
Transfer the house to your children

You can transfer the house to your children if you wish. If the transfer is for a reason other than simply avoiding paying for care the value of the house should not be taken into account.

There are some things you should be aware of if you transfer the house to your children:-

- You will no longer own the house and you will be dependent on your children
- If your children have financial difficulties or become bankrupt or divorce the house may be at risk
- Your children may have to pay capital gains tax on the profit made on the sale of the house
- You will have to pay income tax on the rental value of the house or opt for its value to be included in your estate for inheritance tax.

If none of the above present any difficulties to you then this may be the best option. If not you can consider Option 2.

Option 2
Transfer the house to a trust or bequeath your interest in your will

Where the house may be at risk if you transfer it to your children then you can transfer the house to a trust.

However you will not own the house but the trustees of the trust will own it. You may also have to pay either income tax or inheritance tax and the trustees may have to pay capital gains tax.

The benefit of transferring the house to the trust is that it cannot be taken away from you if your children divorce or become bankrupt. You should also consider leaving your interest in your home to your children in your will.

Whilst none of us like to think that difficulties may arise for our children, it may happen and you may wish to consider this option.

Call us today for **more information** on **01292 281 711**

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At The McKinstry Company, we believe in providing a personal service that gets the results you want. Providing a wide range of expert legal services throughout Ayrshire and surrounding counties, why look anywhere else?

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