

FREQUENTLY ASKED QUESTIONS

- 1** *My parents are both now elderly and frail and can no longer look after their own affairs. What should I do?*

Answer

How you should proceed depends on whether your parents have what is known as “capacity” to manage their own affairs. If they are still mentally capable of managing their own affairs the appropriate way forward is for them each to create a Lasting Powers of Attorney in favour of two people they entirely trust who will look after their property and affairs in the future. If mental capacity is subsequently lost, the Lasting Powers of Attorney will continue in effect. It is also possible for a Personal Welfare Lasting Power of Attorney to be created which would enable the attorneys to make decisions regarding the personal welfare of your parents as well as their financial affairs.

If, however, either or both of your parents is not capable of managing his or her own affairs because of a mental disorder, then someone can be appointed to look after your parents’ affairs if an application is made to the Court of Protection for them to be appointed a Deputy. A formal application needs to be made to the Court of Protection and an Order will then be made authorising the Deputy to look after your parents’ affairs. This is a rather more cumbersome and expensive procedure so it would be best for Lasting Powers of Attorneys to be made as soon as possible if your parents still have capacity to do this.

- 2** *I am a single parent with a disabled child and am very worried about what will happen to him/her when I die.*

Answer

It is very important for everyone to make a Will but particularly in circumstances such as yours. If you do not make a Will, what happens to your estate is outside your control and will be governed by the Intestacy Rules. The way to ensure that your wishes are carried out precisely is by making a Will. Without a Will, your entire estate would pass equally to your children. This could mean that your child with a learning disability will end up inheriting money outright which in turn may affect eligibility to means tested benefits and make him or her vulnerable to financial abuse from others. An appropriately drawn Will would incorporate what is known as a “Principal Beneficiary Trust” which could provide for your disabled child whilst preserving entitlement to benefits and ensuring he/she is protected.