

financial and legal affairs

There are two kinds of Power of Attorney, a general power of attorney and an enduring power of attorney. An enduring power of attorney is one which contains a statement by the donor that s/he intends the power to operate even if s/he becomes mentally incapable. This power must meet other legal requirements including registration in the courts

For further information on how to go about this process, please contact your **solicitor**.

## **Wards of Court**

Where a person becomes mentally incapacitated and has not provided for himself in the form of enduring power of attorney it may be necessary to apply for that person to be made a ward of court. This is usually, but not always applied for by the person's family and/or solicitor. The legal costs are usually paid out of the wards estate. An information booklet is available from the Department of Justice, Equality and Law Reform.

## **Living wills**

There is no legislation in Ireland dealing with living wills, however you should discuss your wishes with your family and your doctor so that they know what your wishes are.

This should also be discussed with a legal advisor.

**This sheet has been prepared for your assistance and is not intended to be a legally binding document or interpretation of the law. For all of your legal advice please contact your solicitor.**

# ***Outline of legal issues surrounding serious illness***

## **Mercy University Hospital**

Medical  
Social Work  
Department

You can ask the ward nursing or medical staff to refer you to the hospital social work department.

Phone 4271971 extension 5647 or 5290. Messages left on voicemail will be returned promptly.

## Outline of legal issues surrounding serious illness

**The following are guidelines only, for legal advice, please consult your solicitor**

### Wills

It is important for everybody over the age of 18 to make a will, regardless of your health condition. It becomes even more important if you have children or property. If you leave property, your dependants will have to apply for a grant of probate before they can dispose of or own the property. This process is more complicated if you have not made a will.

If you have not made a will, the property will be divided as follows; if you are survived by a spouse only, they inherit the whole estate. If you leave a child and no spouse or other children, the child ( whether born in or outside of marriage) will inherit the whole estate. If there is no spouse, but more than one child (whether born in or outside marriage), they each inherit an equal share of the estate. If the deceased is survived by a spouse and one or more children, the spouse will inherit two thirds and the child(ren) are entitled to the remaining third divided equally between them. (Succession Act 1965). Co-habiting couples have no automatic succession rights, and do not have the benefit of the Family Home Protection Act 1976. This situation is under review.

Where a will is made, the terms of the will are put into effect. Please ask your legal advisor for advice in relation to your own circumstances and wishes.

## Guardianship

‘A guardian of a child has rights and responsibilities in making decisions on all the major matters affecting the upbringing of the child, e.g. choice of school, medical treatment, adoption, religious matters, decisions about leaving the country etc’

Where parents are married both mother and father are legal guardians. Where parents are not married the mother is the legal guardian and the father has to apply for guardianship .Where the mother is in agreement to the father being joint guardian they both sign a statutory declaration on Statutory Instrument SI number 5 of 1998 in the presence of a peace commissioner, commissioner for oaths or a notary public.

Where the mother is not in agreement, the father can apply to the district court to be made a joint guardian. This will be decided by the court.

**Being named on the birth cert does not in itself make the father a joint guardian.**

Parents (whether married or unmarried) of children under 18 should appoint guardians for their children in their will. Unmarried parents in particular should discuss guardianship with their solicitor all the more so if they suffer from a serious illness.

## Power of Attorney

It may be useful to appoint somebody to look after your