

Ken MacDonald & Co

Lawyers and Estate Agents

Guardianship Orders

For those who have a family member who loses their capacity and who have not previously granted a power of attorney then there may be occasions when an intervention or guardianship order will require to be obtained from the court. Such measures were introduced and regulated by the Adults with Incapacity (Scotland) Act 2000. The main groups that the Act is designed to safeguard include people with dementia, people with learning disabilities, people with an acquired brain injury or severe mental illness and people with a severe sensory impairment.

A guardianship order can cover both property and financial matters or personal welfare, including health, or a combination of these. It is suitable where a person has a long term need in relation to these matters and has lost, or has never had, capacity to take decisions or actions on these matters for himself or herself. An application may be made to the sheriff court by individuals or by the local authority. Before granting a guardianship order the sheriff will require to be satisfied that the adult is incapable with regard to the matters in question, and that there are no other suitable means of safeguarding or promoting the adults interests in these matters.

An intervention order on the other hand would normally be suitable where there is a single action or decision to be taken on behalf of the adult. They follow the same procedure and requirements as a guardianship order.

At Ken MacDonald and Co we have developed a five step procedure to assist a client through this otherwise complex procedure. We offer a free no obligation first consultation and charge a fair and reasonable fee on a private client basis where there is a need to proceed.

For anyone requiring guidance in this area please contact our Mr MacPherson who will be happy to assist.

Access to Fund Scheme

This is a further safeguard introduced under the adults with incapacity scheme. It is a way of accessing an adult's bank or building society account in order to meet his or her living costs. It is best suited to situations where the income and outgoings of the adult are easily regulated. An application can be made to the office of the public guardian by an individual (normally the person's main carer or other family member) or organisation. If little is known about the adult's finances, the office of the public guardian can, on application, provide authorisation for information about an adult's bank or building society accounts to be disclosed. This is so that an informed decision can be made as to the most suitable arrangements needed for managing the adult's funds. For anyone interested in finding out more about this scheme we would refer you to www.publicguardian-scotland.gov.uk.

Looking out for your tomorrow...

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