



**YOUR** GUIDE TO  
RESIDENTIAL /  
NURSING CARE

**mackinnons**  
solicitors





Whilst many elements of moving yourself or a relative into a care home can be stressful, we believe that we have the expertise and the understanding to assist you, and make the experience as straightforward and painless as possible for you and your family.



# INTRODUCTION

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MOVING INTO RESIDENTIAL NURSING CARE FROM HOME CAN BE A DIFFICULT AND UPSETTING TIME FOR BOTH THE INDIVIDUAL CONCERNED, AND THEIR FAMILY.

Whilst such an upheaval will never be easy, we can help to ease some of the stress caused by providing you with as much information as possible, in order to allow you to make informed decisions regarding the best location, accommodation, service and cost for you.





## CARE ASSESSMENT AND LOCAL AUTHORITY INVOLVEMENT

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In the initial stages, particularly if the person moving into care is being transferred from hospital, a care manager will be allocated by the local authority, to carry out a care assessment. This assessment should not be a cause for concern, as the purpose is to ensure that the most appropriate care will be provided. The assessment will generally take the form of a discussion with all relevant parties, including medical professionals. A financial assessment should also be carried out at this time, if it is likely that the care will be partially or entirely funded by the local authority.

## FINANCIAL ASSESSMENT

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The financial assessment will be prepared by the local authority, based on information provided by the person moving into care, or their next of kin. The local authority are obligated to pay a proportion of the care costs when the individual's own capital level drops below a given figure (the upper tariff).

At the point when the capital level falls below a lower given figure (the lower tariff), the local authority are obligated to pay all care costs. It should be noted however, that these payments only apply to certain care homes, generally those operated by the local authority. It is less common that local authority contributions will be made in full if the individual concerned has chosen to reside in a private care home. This is a query which should be voiced at any initial visit to the care home to establish the position.

## PROTECTING YOUR FAMILY

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One of the most prevalent concerns when a relative moves into residential care is the impact on the family, particularly if a husband or wife remains at home after the move. Safeguarding the family home will also be a primary concern. When a person moves into a care home, if their spouse or a dependant under 16 remains in the property, the value of the property will be disregarded for the purposes of calculating local authority contributions to care fees.





## UNDERSTANDING THE OPTIONS

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The term “care home” is used widely to cover a multitude of residential homes, which do not always include nursing care. A visit is therefore an important part of the process of choosing the most appropriate accommodation, and a trial period after moving into the home is always wise. An initial probation period will generally be written into the contract between the care home provider and the new resident, and this should be seen as a benefit, an opportunity to ensure that the right decision has been made for all concerned.

## FINANCIAL IMPLICATIONS

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The residential charges will vary considerably between care homes, generally based on the standard and level of care and accommodation provided, but also the provider of the care. Privately run care homes will generally be more costly, but may have a greater range of available services, although this is not uniformly the case. Again, an initial visit to the home can assist in establishing whether the wishes and needs of the person moving into care can be met.

## LACK OF CAPACITY

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If a relative is being moved into a care home from hospital, or as a result of a recommendation from an external source, there will often be an immediate need for their financial affairs to be protected. This is frequently a considerable source of stress, and which can be effectively dealt with by one of the following measures:

- 1. If a Power of Attorney has been executed by the elderly relative**, this can now be used to allow the appointed Attorney to deal with all financial affairs as detailed in the Power of Attorney document. The document prepared should cover all eventualities which may arise, and will therefore avoid the need for a guardianship application, which are both costly, and time consuming. In addition, if the Power of Attorney document also granted welfare powers, these can also be used to protect the personal interests of the individual admitted to care, including any medical decisions which may be required, if they are certified incapable of making such decisions for themselves.
- 2. If there is no Power of Attorney in place**, but the estate of the individual moving into care is relatively small, an application can be made for Access to Funds, instead of a full scale guardianship application. This is a simpler process, and is both cheaper and less labour intensive in terms of maintenance for the applicant if granted access to the funds. No court appearance is required for the application, and the procedure is considerably faster as a result.
- 3. If an Access to Funds application is not appropriate**, or welfare powers are also required, then the appropriate method of obtaining the necessary powers will be a guardianship application. The time scale for such an application is considerable as three professional reports must be produced and submitted to the Sheriff Court together with the guardianship application. A court date is then allocated, at which the sheriff will consider the application and appoint the applicant as guardian if he/she believes this is necessary in the circumstances. A guardianship appointment can solve many difficult issues, and allow the person in the most appropriate position to administer the funds and protect the interests of the individual in care.

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