Care Fee Will

Protecting Your Home and Assets from Nursing Care Costs - Many people are concerned about the implications of the Community Care Act 1990 and associated Government Regulations and Guidelines. They are concerned that should they need to become permanently resident in a residential or nursing home, the local authority may use their property to pay for
such care, either by seeking for its sale or by placing a charge against the property until it issold. The regulations as to exactly what everyone may be expected to contribute are complex, this is not intended to be a guide to that, but rather to explain how by writing your wills you may take steps to protect at least half of the value of your property or even all of it from this possibility.

When could this happen? - For many people, with saving over £23,250 this is a real concern. The value of any property is included in assessing the savings of any person needing care, with the following significant exceptions:

For the first 12 weeks' care;

- If the spouse or partner (or another dependent person, such as a handicapped orminor child) is still resident in the property
- If neither of the above conditions are met then should you have no other assets or sufficient income to meet the costs of your care, then your local authority may agree to a "deferred charge agreement", which is in effect an interest free debt securedagainst your property, which may accumulate over the years. Interest does howeverbecome payable should the debt not be paid within 56 days of death.

How can this be avoided? - For most people the property is their largest asset that is often at risk of being spent on the cost of care. Should they attempt to transfer the property toanother person (for example a child) they mayeither:

- Be caught by the "deliberate deprivation" rules, which mean that if the transfer has taken place within 6 months of the donor going into care, the local authority may still treat the asset as the donor's and even if more than 6 months before the donor going intocare, should the local authority still suspect the transfer was made to deliberately avoid paying for their own fees, they may still investigate and take steps to recover their costs.

- Leave themselves vulnerable to circumstances beyond their own control, for example where the donor's child divorces or even becomes bankrupt.

- You may need to pay rent to your child for now living in their property, and they would pay income tax on such rent.

What can we do?

Solution: Care Fee Will - Where a couple own a property jointly (with or without a mortgage), they may use their Wills to each gift their share in that property to (usually) their own children. To do so, they must first ensure that their property is owned as tenancy-in-common, which gives them each a share in the property to leave joint ownership normally means that the property will automatically pass to the survivor, which would leave the survivor in the unfortunate positionof the sole owner as described above. Therefore, if the property is not already registered astenants, a severance is necessary. This makes no difference to the situation while both owners are alive. However, it means that each owner can in their Will leave their share as they wish but can also ensure the long-term security of their surviving spouse or partner in the family home by giving them the right to remain in the property for life. This means that should the surviving spouse or partner then need long term residential care, only half the property is owned by that spouse or partner, the half already given away is protected from the local authority.

Advantages - If both spouses/partners are alive, there is no change as nothingis given away at this stage. They are free to sell the property at any time, retaining complete control over it.

On the death of the first spouse/partner, the survivor retains the right to remain in the property for their lifetime and has the right to sell the property and buy another which may also be protected in this way, so the survivor is not vulnerable to the intended beneficiaries wantingtheir share immediately.

Should one spouse/partner need care at this stage, if the other spouse/partner remains living in the property, the local authority may not take all of its value into consideration in assessing the savings of the person needing care. The deceased's share in the property is (usually) given to the children as default beneficiaries, so does not pass to the survivor outright, HOWEVER;

The survivor will also be one of the Trustees of the trust created, with another person trustedby both parties, giving them some control over their future.

As the gift has been made by the deceased, it is not a gift from the owner needing care, so is not covered by the deliberate deprivation rules outlined above.

And most importantly, should the survivor need long term care, only their own half share in the property may be taken into consideration by the local authority in assessing the value of their savings, protecting at least half the property from this risk.