



Plan for the future  
Listowel  
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# Meet Our Seminar Team

Plan for your future seminar



**Mary Walsh**

Head of Property

Mary heads up the department responsible for all property, wills, elder planning and probate transactions. Mary has a particular focus on matters dealing with the elderly

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**Caitriona Healy**

Solicitor

Caitriona has extensive experience in both the property and litigation departments. She advises both private and corporate clients. She regularly attended the local District Court

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**Michael Fitzpatrick**

Head of Litigation

Michael heads up the litigation department and is the senior partner in the firm. He deals with all complex property, personal injury, and medical negligence matters

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**Anne Keane**

Solicitor

Anne is part of the Litigation team with a particular focus on Family Law – legal separation agreements and divorces. She regularly attends the local District Court and also deals with property disputes

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# Enduring Power of Attorney

## Mary Walsh

# Three important legal documents

## 1. A valid Will

The importance of making a Will

- To provide for your family
- Avoids uncertainty
- Negates family disputes

## 2. EPA

Enduring Power of Attorney – Powers of Attorney Act, 1996

- Does not provide for medical decisions

Advance Healthcare Directive – Assisted Decision-Making (Capacity) Act, 2015

New legislation

## 3. AHD

# Purpose and those involved with an EPA

## Purpose of EPA

- Future Mental Incapacity;
- Intention that power will be effective during any subsequent mental incapacity of the donor

Who is the Donor?

Attorney – appoint two if possible

Notice Parties - two

# Creating an EPA

- The role of your Doctor
- The role of your Solicitor
- Your role – consider the extent of the power and the persons you choose to act on your behalf
- **Changing an EPA**
  - Prior to Registration
  - Change content or destroy document while the person is mentally capable of so doing

# EPA registration in High Court

1

Notification to Donor

2

Notification to Notice Parties

3

Affidavit from Doctor

4

Application to EPA office in the High Court

# Advance Healthcare Directive

## Caitriona Healy



# Why consider an AHD

**DEFINITION:** An advance expression made by the person concerning treatment decisions that may arise if capacity is lacking subsequently

- It identifies the wishes of a patient if that person becomes incapacitated in the future
- It allows directions re:refusal of Life Sustaining Treatment
- An Enduring Power of Attorney does not allow for healthcare decisions by another person
- Patient autonomy
- **How does it work?**
  - A specific form is completed – Designated Healthcare Representative – 2 witnesses
  - Notification to Director of Decision Support Service
  - Register of AHD

# Current legal position in Ireland

- ADM(c)Act 2015 signed into law in December 2016 but commencement date yet unknown
- **AHD will be legally binding provided:**
  - The person was mentally competent at the time it was made
  - It applies to the particular set of circumstances
- **AHD to be followed if:**
  - It was an informed choice
  - It covers the situation that has now arisen
  - There is nothing to indicate that a patient has changed his/her mind

# Treatment Refusals vs Treatment Requests

**Refusal**  
Lack of capacity to consent to the treatment  
  
Treatment clearly identified  
  
Circumstances of refusal are clearly identified

<b>Treatment Refusal</b>	<b>Treatment Request</b>
<b>Binding provided</b>	<b>Not legally binding</b>

**Request**

**BUT...**

Shall be taken into consideration provided the specific treatment is relevant to the patient's condition

# Assisted decision making (Capacity) Act 2015

ADVANCE HEALTHCARE DIRECTIVE: The AHD will **not** be valid/applicable in the following circumstances

- **Not valid if**
  - Directive not made voluntarily
  - Directive maker has acted in a manner that is inconsistent with the terms of the Directive while he had capacity
- **Not Applicable if**
  - Directive maker still has capacity
  - Treatment/circumstances are not materially the same
  - It relates to Life Sustaining Treatment unless risk to life is acknowledged
  - It applies to basic care
- **If in doubt**
  - Things to do.....

# Compliance with AHD

- Healthcare professional **must** comply with AHD if:
  - All legal requirements are met
  - Directive is valid and applicable
  - Professional has to abide by the AHD even if they disagree with the patient's decision
  - Safety net for failure to comply if reasonable grounds to believe it was not valid/applicable

# Property Rights

## Michael Fitzpatrick

# Property rights topics

1

## Responsibilities of a property owner

A property includes land, water, vessels, vehicles, trains, aircraft or other means of transport

2

## Protecting and defending your property

The Nally Case, Mayo  
2011 Legislation

# Responsibilities of a property owner

Duty of Care

Duty of Care



Insurance

- **Visitors** do not suffer injury due to any danger existing on property
- Reasonable duty of care

- **Recreational users and Trespassers** are not injured intentionally
- Or recklessly

- Limit Duty of Care
- Display notice of Occupiers Liability Act 1995
- This does **not** absolve liability fully

- Liability insurance
- **Notify** potential claims
- Policy exclusions e.g. **family members**



# Protecting & defending your property

Criminal Law (Defence & the Dwelling) Act 2011

## **Nally case, Mayo**

Person may use force against an intruder to protect his dwelling if:

- He believes that the intruder has entered his property to commit a crime
- If the force used against the intruder is such as the owner believes to be reasonable to protect himself or his property or his family
- The owner's belief must be honestly held whether the belief is justified or not
- The owner may use such force as may cause death to the intruder
- The owner need not have had an opportunity to retreat from the intruder – he is entitled to stand his ground
- Section 5 – the person using such force will not be liable in damages (compensation) in a claim by the intruder

# Be sensible in protecting your property

An Garda Síochána's website for tips on burglary prevention and security for older persons living alone

- Have a proper alarm fitted and connected to An Garda Síochána or responder
- Secure doors and windows
- Light up your home and store keys away from letterboxes and windows
- Record details of your valuables and away from your home

Your home may be your castle but don't die defending it .....

# Rights of Cohabitants

## Anne Keane

# Qualifying cohabitant

## Binding Agreement

- This provides for financial matters if the relationship breaks down or on the death of one or both cohabitants
- An agreement may simply opt out of the 2010 Act

BA

Who won't  
qualify?

If one or both was married to someone else at the time  
And  
If one or more remains to be married, that adult must  
be eligible to apply for a Decree of Divorce

## A couple who have been living together for:

- Two years or more where they are parents of dependent children
- Five years or more in any other case

Qualifying cohabitant

Who is a cohabitant?

- One of two adults
- Not married or civil partners to each other
- Not related to each other
- Intimate and committed relationship

Civil Partnership & Certain Rights &  
Obligations of Cohabitants Act 2010

# Validity of Cohabitants Contracts

1

Agreement is in writing and signed by both

2

Both must receive independent legal advice or

3

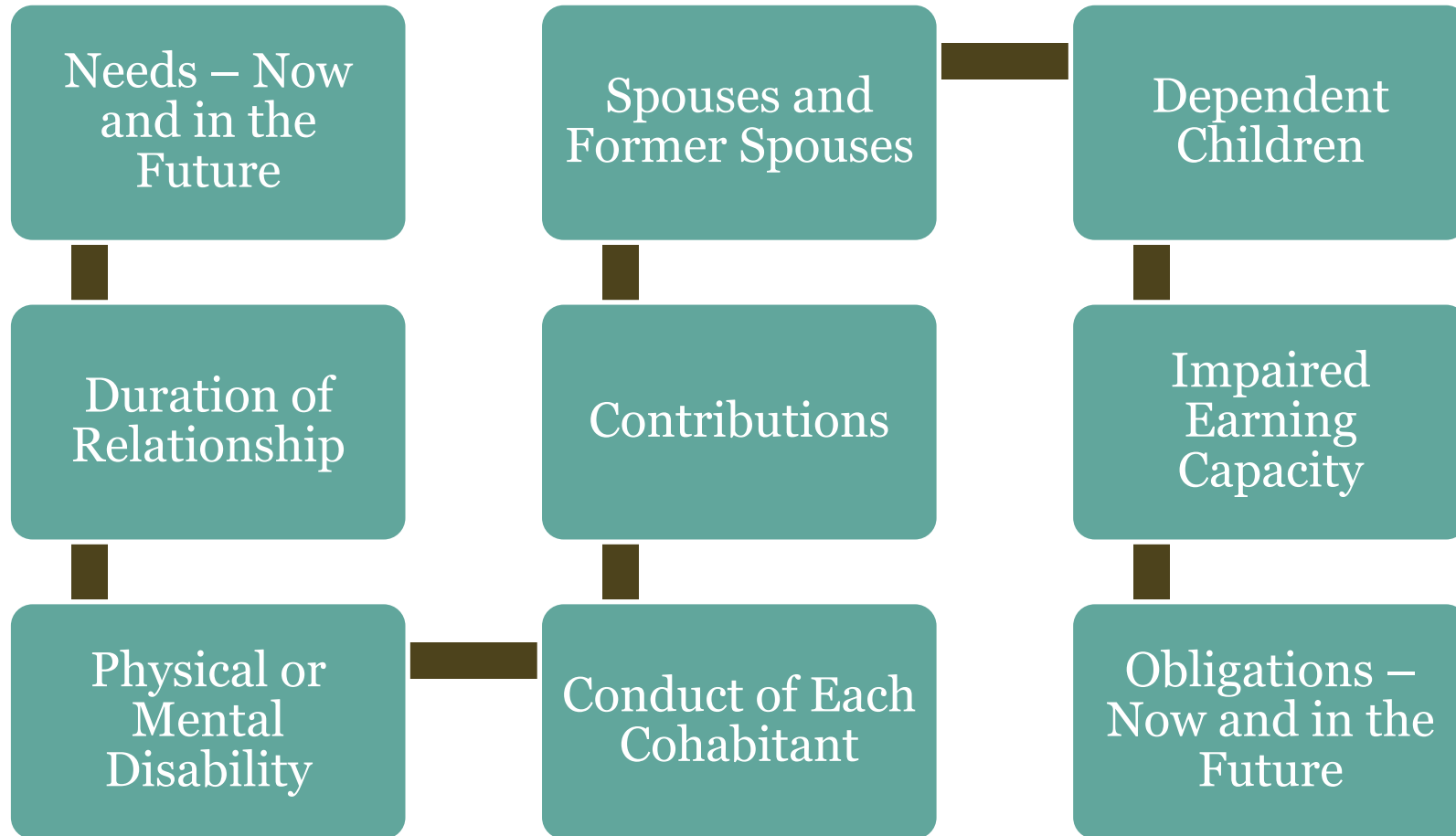
Either or both waive their rights to such advice

4

The general law of contract is complied with

# When things go wrong - Redress scheme

If an agreement is not in place and the relationship ends through death or otherwise an application to the Circuit Court for Redress can be made



# What orders can a Court make?

May be awarded a property,  
or a share in a property  
May be awarded an Order for  
sale of a property

Property

Maintenance

May be awarded periodic  
maintenance or a lump sum  
maintenance payment

The court may award one  
cohabitant a share of the  
other's pension

Pension  
Adjustment

Provision  
from the  
Estate

But not more than what a  
spouse/civil partner would  
be entitled to

# Points to Remember



- A party must be a Cohabitant within the meaning of the 2010 Act
- A party must not only be a Cohabitant to apply for Redress – that Party must also be a Qualifying Cohabitant
- A party must be not only be a Qualifying Cohabitant – that Party must show Financial Dependence on the other Cohabitant
- A Qualifying Cohabitant may record his/her rights through written agreement or apply to the Circuit Court under the Redress Scheme, and such an application must brought within two years of the end of the relationship.



# Questions & Answers



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