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A Guide to Giving Away Your Home

- Understand the potential tax consequences of making a gift of your property.
- Understand the impact this might have if you later went into long term care.
- Understand potential family issues which may occur in the future



Thinking of selling your home?

We are often asked whether it is wise for parents to make a gift of their family home to their adult children (sometimes expressed as “putting the house in the children’s names”). The usual reasoning behind this would be that by doing so it might save tax, or perhaps avoid a future liability for care home fees.

First of all, your home is one of the most important assets you own and so you should never sign away ownership of it without fully considering the implications of doing so. After all you will lose control over the use of your home and property. You will have no say in whether the property is sold, mortgaged, taken by creditors or used for a purpose that you don't like. You will lose the right to live in the home or somewhere on the property. You will lose the right to rent the property or otherwise use or occupy the property.

There are many myths about the value of gifting your home to your children. Here is some general information about the risks and challenges you face if you transfer your home.

Care Funding & State Benefits: Deliberate Deprivation of Assets

There are rules against ‘deprivation of assets’ for the purpose of claiming means tested benefits and for claiming Local Authority assistance with care home fees. In certain circumstances the Local Authority can treat you as still owning the capital of which you have deprived yourself regardless of whether you can claim it back or not. This could leave you in severe difficulties in paying for care should you need it.

If you are in receipt of means tested state benefits, such as income support and you give away an asset such as your home, which appears to the Department of Works and Pensions (DWP), that you did so with the

intention to reduce your assets, so as to qualify for certain benefits, they may assess you as if you still own the asset.

Finally, you should bear in mind that by reducing your estate you may, in effect, be planning to live in state-funded care for the rest of your life if you were to become ill in the future. You should give some thought about the quality of the care that you might receive in these circumstances and the standard of that type of accommodation.

People of modest wealth may have no choice about this - but people of means should be thinking of ways to fund high-quality care, not planning to avoid it.

Tax Problems: Inheritance Tax

Inheritance Tax may be payable on your death on assets, including savings, investments and property over £325,000 (2015/16 tax year) (this is called ‘the nil rate band’). Tax is payable on the amount over this figure at 40%. This figure is reviewed annually in the Budget. For more detailed advice on inheritance tax, please contact us.

If you have made gifts of money or assets in your lifetime over £3,000 and within 7 years of your death, the value of these gifts may be added to whatever other assets you own when you die, to determine the tax payable.

If you transfer your home and still live in the property when your assets (including the value of your home) are worth over the nil rate band the Revenue will treat this as a ‘gift with a reservation of benefit’ and your estate will be taxed at death as if you still owned the asset.

Tax Problems: Capital Gains Tax (CGT)

Gifting your home means that you will lose the normal CGT Tax uplift on death. If you bought your house many years ago then it is probably showing a considerable increase in value.

The growth in value of your home whilst you own it and live in it is exempt from CGT by virtue of Principal Private Residence Relief (PPR), but as soon as the property is owned by someone else not living in it, PPR is lost and all future growth is liable to CGT.

Future Family Issues

Gifting your home means that your property then becomes an asset of your children, so, if they get divorced, go bankrupt or die before you, you could find your home under threat.

Also, if after you have transferred your home to someone you later have a disagreement with or you fall out with them, in certain circumstances they may be able to force you to leave your own home.

You should consider what would happen if one of the persons you gifted your home to died before you and they had not updated their Will to make provision for you to occupy the property.

Also what would happen if they were to lose mental capacity or their health deteriorates and they need to go into long term care.

Responsibility for the home

Although you may give your home away, you may agree to be responsible for the buildings insurance, repairs and general maintenance. You might be quite happy with the responsibility, but what may seem straightforward in the early stages could cause problems later on if you cannot financially afford to continue these payments.

To prevent any future problems, you should discuss and establish who is to pay for all major outgoings of the property. Although it is your home, if you no longer own it, you could be asked to pay rent by the new owner(s). They may even sell the property and you could have no home.

Also consider would you be happy if they took out a mortgage over your home?

What about if I pay a Market Rent?

You could continue to occupy the property and pay a market rent to the new owner of the property. This would avoid falling foul of the reservation of benefit rules for inheritance tax purposes (although you would still need to survive for 7 years from the date of the gift). However, where a market rent is paid, the owner will be liable to Income Tax on that income, which could be a relatively high sum depending on their Income Tax band.

Is there an alternative way forward?

It's not all doom and gloom!

A common way to avoid the above pitfalls, rather than giving your home to your children during your lifetime, is to deal with it on your death.

You can make a Will that is structured to help protect against care home fees, the aim of which would be to ring fence within a trust the value of the interest in the property (and if appropriate other assets) of the first to die.

The purpose of this is to ensure that these assets do not pass outright to your surviving spouse. Your spouse would still own her/his half of the house and this will be taken into account in a care home fees assessment, when she/he goes into care, however, your half will be protected for your children.

What should I do now?

If you are considering taking action to protect your family home against care home fees or tax, then specific legal advice must be taken.

For individual advice and assistance contact our Wills, Trusts and Probate Team to find out how we can help.

Disclaimer - This guide contains information on current legal issues applicable at the time of printing. Note there may have been changes subsequently which have not been incorporated into the material. This guide is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice.

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We deliver excellent legal services with a human touch and are proud to have a reputation for being approachable and going the extra mile for our clients. We provide high quality, pragmatic advice and offer a comprehensive range of legal services, delivered by experts and supported by our culture of respect and understanding.

Our expertise includes:

- Wills, estate and succession planning;
- Powers of Attorney and Court of Protection;
- Administration of estates and post death planning;
- Trust creation and administration;
- Will disputes;
- Matrimonial and family law; and
- Buying or selling a property.

Earlsdon Park
53-55 Butts Road
Coventry
CV1 3BH

☎ 024 7663 2121
✉ info@bandhattonbutton.com