

Protecting your Property from Care costs – What are your options?

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A major concern for many of our clients is the increasing cost of moving into a Care Home at some point in the future and the fear of having to sell their home to raise sufficient funds to cover the cost of their care. For most people, the most valuable asset in their estate is their property and therefore, we are often asked the question “What can I do to protect my property and ensure that it passes to my children or grandchildren?”

One option is to gift your property - however there are significant risks involved if you gift your property outright to your children. The two main concerns are as follows:-

1) A major risk is that once your property has been gifted to your children and the title has passed into their names, the property becomes their asset. Therefore, if your children subsequently file for bankruptcy or get divorced, their share of the property would be subject to the bankruptcy or divorce proceedings. Additionally, if relationships with your children become estranged or difficult, it would be possible for your children to sell the property without your consent.

2) Giving away your property may also give rise to a Capital Gains Tax issue in the future. A capital gain will be calculated on the increase in value of the property from the date of gift to your children to the eventual date of sale. This increase in value may be subject to Capital Gains Tax which would be payable by the owner of the property at the date of sale at the rate at which the owner pays income tax. Therefore, if your children are higher rate income tax payers then the Capital Gains Tax rate could be 28%.

These are just two of the reasons why we do not recommend gifting property to your children directly. So, what are the options available?

1) You could gift the property into a Trust

By gifting your property to a Trust (rather than directly to your children) you are afforded a measure of protection.

The Trust would stipulate that you are allowed to live in the property for as long as you wish rent free. Your children would only receive an interest in the property once you are no longer able to live in the property or you pass away. Therefore, if you fell out with your children, or they get divorced or were made bankrupt whilst you were still living in the property, then your security of tenure would be safeguarded.

As you would be using the property as your “Principle Private Residence” then the exemption from Capital Gains Tax would also apply once the property is sold in the future. Therefore, the risks outlined above can be avoided.

However, there is still a possibility that the Local Authority could look into the gift and if they deem that your intention was to “deliberately deprive” your estate of an asset, which could have been used towards payment of care fees, they can assess you for Care Home fees on the basis that you still own the property and will be able to charge fees in accordance with the value of your assets. There is no timescale for “deliberate deprivation” therefore this is always to be considered carefully. In some cases, depending on your age and health, a gift of your property to Trust will therefore not be suitable.

2) A Trust in your Wills

Our preferred option would be to make use of a Trust in your Wills. The way that this works is that the property would first have to be owned jointly as “Tenants in Common” and therefore each of you would own 50% and be able to dispose of your 50% as you wish in your Will. If you own the property as Joint Tenants (as most married couples do), upon the death of one of you, the property would automatically transfer into the name of the surviving owner and increase that persons capital. A simple Deed of Severance can amend your title deeds from Joint Tenants to Tenants in Common.

Once the property is held as Tenants in Common, we would stipulate in your Wills that on the death of the first of you, your half share of the property will be placed into a Trust which would grant the survivor (or the beneficiary) the right to reside in their share of the property for their lifetime. If the survivor then needs to go into a Care Home, they would be deemed to only own half of the property and therefore half of the equity is protected for the eventual beneficiaries who are usually the children. The Local Authority should not deem this as a deliberate deprivation because the right of occupation by the survivor was under the terms of their deceased spouses Will and it cannot therefore be claimed that the survivor has given half of the house to a trust as it was not theirs to give but their deceased spouse’s.

In summary, we would not recommend that your property is gifted to your children absolutely as there are significant risks involved. However, there are other options as outlined above.

Although the whole of the property can be transferred into a Trust to protect it from being subject to Care Home fees, there are still significant risks and considerations to make before taking this course of action. However, there is a way to protect half of the property and ensure that at least 50% of your property passes to your loved ones in accordance with your wishes with some careful planning.

If you would like any further information regarding the above or would like to book an appointment to come in to discuss the same, please do not hesitate to contact the Private Client Department who will be more than happy to assist you.

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