

CARE HOME FEES AND YOUR ASSETS

This is a question I am often asked by my clients, as potential payment of future care home fees is a very real concern for most of us.

ASSESSMENT

When you enter into a care home on a permanent basis, you are means tested to see whether you should make a contribution towards the cost of your care. The Local Authority will calculate this contribution using your income, savings and other capital according to national rules issued by the Department of Health. Your income may include benefits such as pension credit, which is administered by the Pension Service, part of the Department for Work and Pensions.

ASSET TRANSFER

You may want to pass on savings or other capital to children or others but transferring an asset out of your name does not necessarily mean that it will not be taken into account in the means test. Both the Local Authority and the Pension Service can, when assessing a resident's eligibility for assistance, look for evidence of deliberate or intentional deprivation of capital such as a property. Deliberate deprivation occurs when an individual transfers an asset out of his or her possession to put him or herself in a better position regarding the means test for care home accommodation.

DEPRIVATION

The term deprivation covers a broad range of ways in which the owner of an asset might transfer it out of his or her possession. For example:

- a lump sum payment such as a gift or to pay off a debt

- transferring the title deeds of a property to someone else
- putting money into a trust that cannot be cancelled
- converting money into another form that has to be disregarded from the means test for example personal possessions and some investment bonds with life assurance
- reducing capital through substantial spending on items such as expensive holidays or by extravagant living

Other courses of action, such as selling an asset for less than its true value may also be seen as deprivation.

Disposal of assets is not necessarily carried out to avoid a charge for accommodation or to gain assistance sooner than would otherwise have been the case. The Local Authority or Pension Service has to show that this intention was there before it can take the transferred assets into account.

Avoiding accommodation charges does not have to be the only motive behind a transfer of capital for it to be treated as deliberate deprivation, but it must be a significant one.

TIMING

The timing of the transfer may be important in establishing motivation. For example it would be unreasonable to decide that a resident had disposed of an asset in order to reduce his charge for accommodation when the disposal took place at a time when he was fit and healthy and could not have foreseen the need for a move to residential accommodation.

DELIBERATE DEPRIVATION

If you are found to have deliberately deprived yourself of capital and assets you will be treated as having “notional capital” to the value of the capital you disposed of. If the notional capital added to your actual capital comes to more than £23,000.00, the Local Authority may assess you as being able to meet the full cost of your care, even though

your actual capital is less than the upper limit. The inclusion of notional capital in your total can also affect your eligibility for pension credit.

PART DISPOSAL

Where part of an asset has been given away, or an asset has been sold for less than its true value, you may be treated as having a mixture of actual and notional capital. The remaining interest in the asset or the sale proceeds is actual capital. You may then be treated as having notional capital to the value of the part of the asset that has been given away, or the difference between the sale price and the assets true value.

NOTIONAL CAPITAL

Having included notional capital in your finances, the Local Authority and the Pension Service apply “diminishing notional capital rules” to work out when you should become eligible for funding or benefits. The Local Authority treats notional capital as diminishing each week by the difference between the amount the resident has to pay for the accommodation and the amount they would have paid if they were not being treated as having notional capital. The Pension Service will treat notional capital as diminishing by an amount equal to the pension credit that you would have received if you did not have the notional capital.

RECOVERY

Under Section 21 of the Health and Social Services and Social Security Adjudication Act 1983, where a resident has deliberately deprived himself or herself of an asset, the Local Authority can recover any sums it consequently has to pay towards a resident's care costs from the person who the asset was transferred to, as long as the deliberate deprivation occurred within six months of the resident approaching the Local Authority for funding. If the transfer was made more than six months before, the Local Authority cannot use this section.

TIME LIMITS

The six month limit only applies to that particular power of recovery. There is no set time limit beyond which the Local Authority has to ignore transfers of assets. If a transfer occurred more than six months before the resident applies for assistance the Local Authority can still treat him or her as having deliberately deprived themselves of that capital under the charging regulations. They may initially refuse to fund the resident, necessitating a challenge, or if they do provide funding, in these circumstances they may treat the assistance provided as an accruing debt owed by the resident to the Local Authority.

OTHER CONSEQUENCES

Quite apart from the issues surrounding care home funding discussed above, transferring assets to another person will have significant consequences if you do not subsequently need to enter a care home. Once an asset has been transferred out of your name you no longer have control over it. It is not always possible to rely on the new owner acting in accordance with your wishes. You should consider carefully how you might be affected if disagreements arise in the future.

SUGGESTIONS

Some of the suggestions made below apply specifically if you are considering whether to transfer your home. Others apply to the transfer of any capital asset:

- you may at some point want to move from your current property to somewhere more suitable. If the property has been transferred you will require the new owner's agreement to do this.
- If you no longer own your own home you will not be able to raise income or capital against the equity in it.
- If you retain the right to live rent free in your former home this may be treated as a "gift with reservation" for Inheritance Tax purposes and the property included in your estate.

- If the new owner marries, divorces or uses the property as security for a loan your position may be affected.

ACTION

It is advisable to seek proper legal and financial advice before proceeding with any transfer. As always, we are here to help. If you have any comments or queries regarding anything contained within this article or indeed if you require any advice on Estates, Probates, Trusts, Inheritance Tax, Enduring Powers of Attorney or Lasting Powers of Attorney please do not hesitate to contact me on **01288 35 9000** or email **sharon.piper@busbyslaw.co.uk**.

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