

## \* *Care fees planning and dangerous giving*

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Many older clients are rightly concerned about the impact that care home fees in later life might have on their estates; payment of home fees can potentially leave an older person with only £23,250 to pass onto their beneficiaries whilst the impact of Inheritance tax, especially for married couples and civil partners, is much less onerous.

Some clients might be tempted to take action to try to preserve more of their assets from the ravages of care fees but extreme caution needs to be taken. Gifts in these circumstances can be dangerous and might make the situation worse than it would otherwise have been.

Take the example of 86 year old Ivy, a widow living in a property valued at about £600,000. As Ivy is finding it increasingly difficult to manage on her own, she realises that she may have to move into a care home and that, potentially the proceeds of sale of her property will be used to meet her fees until she has just £23,250 left and the Local Authority begins funding her care. Ivy's son Paul is also concerned about the possible impact of inheritance tax (IHT) and suggests to his mother that she should think about giving her house to him and Ivy's daughter Sheila.

Ivy, who is not in the best of health, becomes more and more anxious about the situation and eventually agrees to the gift to Paul and Sheila, believing that Paul has looked into the situation and that this is the best way of preserving the value of her home. A year later, Sheila becomes unable to provide the same level of care that she has been giving to Ivy as Sheila has to take a full-time job following the break up of her marriage. Ivy, unable to manage on her own, moves permanently into a care home.

### **What are the consequences of Paul's ill thought through advice?**

- Ivy receives a financial assessment from the Local Authority (LA) on moving into the home when they discover the existence of the gift. The LA take the view that Ivy's motive behind the gift was to deprive herself of assets that would otherwise be regarded as capital for the purpose of assessing Ivy's care funding. The LA therefore treat the house as "notional capital" belonging to Ivy and she is given no help towards payment of her fees.
- When the house is given to Paul and Sheila no capital gains tax (CGT) is payable as it was Ivy's main residence. However, neither Paul nor Sheila live in the house and on its sale the gain since the gift was made is subject to CGT.
- No IHT is saved as the gift is not effective for IHT purposes until Ivy leaves the house, and she dies within 7 years of this occurring. In any case, Ivy's late husband, Eric, had left all his estate to his wife on his death 3 years ago. Ivy could therefore claim her own IHT nil rate band of £325,000 and Eric's unused nil rate band of the same amount, meaning that IHT would not have been payable on the value of the house in any case.
- On Sheila's divorce her estranged husband claims half of Sheila's interest in the house whilst Paul's creditors, following the collapse of his business, also have a claim on his interest in the property.

## The moral of this story?

You should always take advice to avoid the perils of dangerous giving and to ensure that you are aware of all the consequences of a proposed gift. Moreover, the earlier advice is taken the better. If, for example, when Ivy and Eric had made their wills they had expressed their concerns, consideration could have been given to dealing with this in their wills, perhaps by creating trusts of their respective half shares in the property. Such a structure can:

- preserve half of the house from being used to pay care home fees;
- is far less likely to be challenged by the LA;
- ensures the availability of the CGT main residence exemption; and
- protects the house from claimants on divorce and from financial creditors.

## Further information

For further information on this or on any other Private Capital matter you may have, please contact:



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