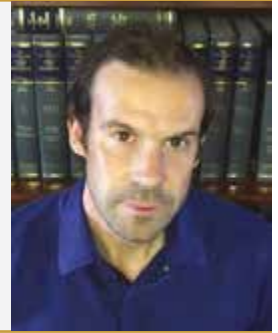


PROTECTING YOUR HOME FROM CARE HOME FEES – DEBUNKING THE MYTHS

For the older or retired officer concerned about care fees, there is a wealth of advice available from a number of sources, many of which are misleading.

Private client solicitors would be somewhat disingenuous if they denied they were frequently asked the question about whether they can protect a client's home from being taken should they require long-term care



John Howell of Harvey Howell Solicitors discusses the subject

"Firstly", says John, "Only take advice from an experienced, well qualified solicitor".

There are many non-solicitor (therefore unregulated and possibly uninsured) "legal advisors" out there who charge thousands of pounds for schemes designed to shield assets from being used to fund long-term care. Many of such schemes involve gifting the family home to the children or settling it into a family trust.

John warns "schemes or trusts written for this purpose will not shield the assets as you might wish".

Gifts to children and trusts which are made in order to avoid paying care home fees fall foul of regulations which state, *"A resident may be treated as possessing actual capital of which they have deprived themselves for the purposes of decreasing the amount that they may liable to pay for their accommodation"*. This means that the local authority can effectively overturn the arrangement and chase the recipient of the gift.

John explains "Deprived does not have any particular definition in law".

In the case of *Yule v Lanarkshire [2000]* Mrs Yule, a 78-year-old widow, transferred her house to her granddaughter around 16 months before she became resident in a nursing home. Her advisors were of the view that she was in good health at the time of making the gift. The local authority determined that Mrs Yule had given away her property with the intention of claiming support. It was established by the court, as a matter of fact, that Mrs Yule knew there was a means tested requirement and her age and the timing of the gift was particularly relevant. The court held that the local authority were correct in assessing Mrs Yule as still owning the house so that its value could be taken into account.

This said, some schemes have the potential to protect your home and other assets from care home fees and challenges – cases like Mrs Yule are few and far between. The burden of proof is on the local authority to prove the intention behind the gift which is notoriously difficult (and expensive). Often, the remote chance of someone

ending up in care is not sufficient to show a deliberate deprivation of assets – particularly if there is no evidence to suggest a person will end up in care. This being said, local authorities are continually looking more closely at the arrangements with focus on the true, not contrived, reasons for creating them.

John asks "is there really a problem for most people?"

Firstly, a jointly owned property will not be taken from you.

Less than 4% of the population over 65 and only 16% of the population over 85 live in a care home. The median period from admission to a care home and death is only 15 months

In summary, the chances are very low and, even if a person does need long term care, the stay is often not for very long i.e. not costly

The average cost of a room in a care home in the UK is £30,000 a year. A retired officer's overall income can largely cover this plus their children have the option to rent out the house and generate an additional five figure annual income.

Furthermore, many retired officers can afford to pay for care in their own homes (which is cheaper) and many people will even qualify for free NHS care (subject to their needs)

If the retired officer has a relative aged 60 or over occupying the property either in part or whole as their main or only home then it will also be disregarded for care fee liability assessment purposes.

Therefore, John says, *"Do not take drastic steps such as giving your house away in order to avoid a problem that may well not exist."*

If you gift your house to your children now you leave yourself at the risk of the effects of you falling out with them, their divorce, their death, their financial difficulties/bankruptcy and you are also likely to give them an unnecessary capital gains tax burden

John, commenting on the recent controversy about the conservative manifesto's so called "dementia tax", says,

"Currently anyone with assets over £23,250 (including the family home) is required to pay the full cost of their care. The conservatives have promised to change this to £100,000 which is clearly an improvement" but the snag is, he says, "currently if you receive care in your home, the value of the family home is not taken into account for the assessment. The conservatives are suggesting that it should be - albeit subject to an as yet unspecified cap"

John explains further why most people will not lose their homes with sensible and legitimate planning through a simple example:

"The average house price in the UK is around £200,000. Mr and Mrs Hughes are married with 2 children. If one of them requires long term care, we have established that the value of their home will not be taken into account because it is held jointly. The problem arises when the first person dies and leaves their entire estate to the survivor. If the survivor needs long term care then the house can be taken into account".

So what does John suggest?

Continuing his example he says "Mr and Mrs Hughes should make mirror Wills which, in the event of the first to die, leaves their half share of the family home to their children. Of course they would grant to the surviving spouse a right of residence and the ability to move home etc. The effect of this is that, after the death of the first spouse, the survivor owns only half a house. If we look at the average house price, this is an asset of £100,000 – which the conservatives say we can keep – so some simple planning can protect the whole house".

What about trusts?

The social care system aside, John is a big fan of a lifetime trust and believes they can provide real peace of mind but are very much underused or misunderstood devices.

How can a trust help you?

John sets out a number of real benefits to a trust, but he says, "They must be made for the right reason and only after taking proper legal advice."

A trust gives you more certainty

People make Wills for peace of mind. Whilst it is a nice idea to have a document which says when you die (which might not be for decades to come) your children can have the family home, who knows what your position will be at that stage? More and more older people are being scammed out of home ownership. Settling a property into trust now for your children gives you more certainty – more peace of mind.

A trust ensures your spouse does not remarry (which automatically revokes a Will) lose the house or change their Will after your death

A Will only protects against losing your half of the house (or not even that depending upon how the ownership is structured). What about the other half? What about children from your previous marriage? Will your surviving spouse still wish to benefit them - years after your death?

A trust avoids probate and associated fees, delays and stress

Prior to the announcement of the general election the conservatives had announced a raise in probate fees from £155 to up to £20,000 for some estates – dubbed a "stealth tax" by critics. The legal fees for probate can be anything up to 5% of the estate, some £10,000 on a £200,000 estate. Through a trust, after your death, the property belongs to your children without the need to obtain probate – avoiding these fees.

A trust can mitigate the risk of claims against your estate

We live in a claims culture. Disgruntled children and others who have been left out of your Will often make claims against your estate. A trust operates outside of your estate so is not subject to such a challenge.

A trust can protect your assets for your children after your death

After your death, your children may divorce and their departing spouse may take half of your assets in addition to half of those belonging to your child. Your children may be vulnerable, in financial difficulty or simply wayward – trust planning can deal with these issues immediately during your life.

A trust can assist with inheritance tax planning

Trusts are not just for the new Duke of Westminster! Had the Grosvenor estate been liable for inheritance tax, the amount owed to the Treasury would have been not far off the government's entire death duty take for the last financial year – but the estate was in trust which means that the £9 billion inheritance is largely to remain intact.

John emphasises that "no two situations are the same. Advice must be bespoke and is affected by different personal wishes and priorities taking into account varying family assets and dynamics".

And, his final request for everyone "please don't forget to make Lasting Powers of Attorney. You may not appreciate their importance but we see the unfortunate consequences daily for those without them in place."