

## **Why Not Gift The Family Home Away?**

There are many reasons why a person might consider transferring ownership of family home; normally forefront in most people's minds is to protect their main asset from tax and means testing (of course there are other reasons);

If the two reasons mentioned above are the only ones or the main motivating factors, the pitfalls may well outweigh any potential or perceived benefit, for example;

- loss of control over your main asset; your home
- your ability to stay on in the house will be at risk to any changing circumstances of the chosen recipient (e.g. on divorce, bankruptcy or death of the recipient)
- there are anti-avoidance provisions in place which local authorities may invoke if they believe the transfer of the property has been made specifically to avoid its value being means tested for residential care (in principle regardless of the length of time that has elapsed since the making of the gift);
- if you have gifted your home but remain living in it, it is still part of your estate for Inheritance Tax purposes even if not registered in your name and even if you survive 7 years from the making of the gift (complex lifetime trust arrangements seeking to get around what is called the 'reservation of benefit' rule have now been blocked);
- if those to whom the property is transferred are not living in the property they will not be able to claim main residence exemption for Capital Gains Tax purposes on any gain in value between the transfer of the property to them and its ultimate sale;

If notwithstanding the above you still wish to consider gifting away your home the best advice is to gift the house via a trust that secures your right to live in the property for your lifetime. Be aware the value of the property will remain in your estate for Inheritance Tax purposes but the capital gains tax problem mentioned above will be avoided\*. However, it is still open for the local authority to invoke the anti-avoidance rules if they believe that the transfer into trust was made specifically to put the value beyond the scope of means testing. Also be aware that you will be giving up your rights to the capital value of your home which may significantly affect your lifestyle choices going

\* N.B. Gifts into trust can trigger a charge to Inheritance Tax and give rise to periodic charges and a charge when property leaves the trust calculated at a marginal rate of up to 6% (at current rates). It is important to seek expert advice.

forward (including for instance the ability to purchase a better standard of care for yourself should this be needed).

**This fact-sheet is intended only as an initial guide based on current laws and general principles and is no substitute for specific advice based on your individual needs and circumstances.**

**For further information and advice please contact Claire Johnson at Leo Abse & Cohen on 02920 272 149 or via email at [clairej@leoabse.com](mailto:clairej@leoabse.com)**

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