

## GIFTING THE FAMILY HOME

Some of our clients decide that they might want to make a gift of the family home to their children, other relatives or even unrelated third parties. This guidance explains the options available.

There are many reasons for considering making a gift of the family home:

<b>General affection:</b>	You may want to recognise the love and affection you have for the proposed recipient in a significant way. This is sometimes done by way of lifetime giving instead of by will.
<b>Moral obligations:</b>	You may want to feel that you have fulfilled your moral obligations. If there is an expectation that the recipient may become your carer in the future it may be appropriate to recognise that. It may also be appropriate for certain family promises to be met in a formal way.
<b>Financial obligations:</b>	You may wish to formally recognise the contribution which a family member has made (directly or indirectly) to your property and/or to your lifestyle. For example, a house purchase, mortgage payments, an extension, a patio or double-glazing may have been funded by the recipient.
<b>Family harmony:</b>	Every family has the potential for disputes, especially over property and money related issues. It may be necessary to avoid problems on death by recognising those issues now and making a gift of the family home during lifetime.
<b>Avoiding delays on death:</b>	You may be concerned to reduce delays on the sale of your property if you die. Without a grant of representation (probate) the property cannot be sold. The process to obtain the grant of representation can take time.
<b>Passing on the burden of property ownership:</b>	You may want to pass the burden of owning a property on to the next generation. This can be the financial burden as the cost of insurance, upkeep and particularly major repairs may be difficult to fund from pension payments and income in later life. It can also be a psychological burden. Being "free" from property ownership can bring peace of mind.
<b>Administrative efficiency:</b>	As people grow older some feel that all the paperwork relating to property ownership is simply 'too much'. They want to pass that obligation on to others who will be responsible for it.

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Whatever your reasons, making any gift raises a very important question: **Am I certain I want to do it?** It is particularly important to ask this when the family home is concerned. It may be your main asset. It may represent your personal and financial security and your care choices.

There are many reasons to be cautious when considering making a gift of the family home:

<b>Financial difficulties</b>	The recipient of an outright gift owns the asset. It will be taken into account as one of their resources on bankruptcy. It may be lost to creditors. This can be a disaster for parents who gifted their property to children. They can be left without a home. There are also other, more common, financial pressures. The recipient may become unemployed, be forced to take a pay cut or fall ill. The recipient might not willingly seek to sell the property to help them eke out limited resources but their partner and the pressures of their immediate family might make it irresistible. Gifts of the family home put your residence at risk.
<b>Divorce</b>	Assets owned outright are taken into account as part of the resources of the parties to a marriage in a divorce settlement. Assets gifted to a recipient may be lost, if not immediately then later, to the family of the recipient's former spouse. This could make your position uncomfortable if your home was taken into account in a divorce settlement.
<b>Means-tested benefits:</b>	The recipient might be in receipt of means-tested benefits which could be reduced or stopped as a result of the gift. If you continue to live in your property this should not happen as it should be 'disregarded' in the means-test calculations, but if, for example, you entered care it could be taken into account. The value of the property may therefore be swallowed up because the recipient might lose entitlement to benefits and need to sell up and spend the proceeds.
<b>Is it always good to receive?</b>	Some recipients suffer from anxiety upon the receipt of significant sums, and particularly upon receipt of the family home. It may be best to avoid making gifts to anyone who appears to be quite content but who might seem nervous of the responsibility a gift would bring.
<b>The Mammon effect (the power of money):</b>	When an asset is received the desire to sell it and spend it can prove overwhelming to some people. This is particularly important in the context of transferring the family home to the next generation. Motivating factors such as mortgages to pay, pressing debts, the desire for holidays and cars, and the cost of child rearing can turn the heart of some towards realising capital by whatever means necessary. Sadly, it does happen.
<b>The recipient who is 'under the influence':</b>	Even if a child or other potential recipient is presently well disposed to you, bear in mind that a third party such as a spouse or other person (perhaps not even

	on the scene yet), may not be. Drink and drugs have also led to the demise of many fortunes.
<b>The recipient who is a 'rake'</b>	It may be that the recipient of an outright gift simply gives up working as hard as they have before. They receive what they consider to be a great sum and cease to apply themselves to their education, work or life in general.
<b>The recipient who dies prematurely:</b>	If a child dies, an asset given to them outright may pass by will or the rules of intestacy to a spouse, who may remarry. No one who has given away significant assets, especially the family home, would care to be in the hands of the family of another.
<b>Gifts of income-generating assets:</b>	This is particularly important when interest rates are low or falling. If you make an outright gift of your home it cannot be used by you to generate an income should you need that, rather than a place to live.
<b>False hopes about tax:</b>	Some clients expect that all gifts, including a gift from which they retain a benefit, such as the family home, will have the effect of saving inheritance tax or some other tax. <u>It will not usually have such an effect.</u> If the family home is transferred to a recipient who does not live there, the 'principal private residence exemption' for capital gains tax will be lost on sale of the property. Neither will there be a 'capital gains tax free uplift' on your death. If you decide to proceed, you must ensure that you are happy with the potential tax implications and we can advise you on these should you require.
<b>Abandoned donors:</b>	Clients sometimes assume that, having made a gift, the recipient will honour them with even more love, care and financial support in times of need. Unfortunately, the opposite may be true. The recipient may consider that there is little reason to help an older person stay at home. This lack of support may condemn you to early entry into a care home. The gift may also deprive you of the opportunity to choose a better quality of care. Local authority provision tends to be at a basic level.
<b>Long-term care provision:</b>	Your home can be dealt with as you see fit. If, having carefully considered the situation, you decide to make an outright gift of the family home then it is your choice. We can assist you in that transfer. However, that will usually be against advice.

### Avoid 'schemes'

The Law Society is aware of a number of non-solicitor legal advice services which sell schemes with the aim of making a gift of property with the intention of reducing the older person's liability to pay care home fees under the local authority means test. Advice from solicitors such as GL Law should be quite different from that for an 'off the shelf' product sold by an unqualified person. The risks involved in gifting or transferring the family home have, for example, been addressed in detail above. If you have any doubts at all you should discuss these with us before going ahead. We can tailor a trust deed to your requirements. You should not go ahead if you are at all concerned that the transaction is not exactly what you want to do.

### **It is your decision**

If you are seeking to transfer your family home only because somebody else wants you to and it is not simply your decision then you should not do it. That person may have a 'conflict of interest' with you.

### **The action which a local authority might take following a transaction which reduces the liability to pay for the cost of long-term care must be set in context**

You should also be aware of certain local authority powers. It is quite right that you should be advised that those powers are important. It is however also fair to say that those powers should not be exaggerated. Also sometimes the NHS has a responsibility to pay all a person's care fees. Even if that is not the case, if you entered nursing home care the NHS should be liable to pay a contribution to cover nursing costs. Local authority means-test assessments for long-term care fees can also be wrong and may be challenged through their complaints procedures, the local government ombudsman and the court.

### **What action can a local authority take if a transaction reduces liability to pay for the cost of long-term care?**

Local authorities can sometimes place a charge on property (like a mortgage) if care fees remain unpaid, but that does not apply to gifted property. That might be said to be an advantage of making a gift, but gifts should probably not be made if that is the only concern. The local authority can in some circumstances send the bill for care fees to the recipient of the gift or the trustees. But that is only if you avail yourself of local authority assistance within 6 months of entering permanent residential care. They can sometimes treat you as owning the value of something which has been given away or placed into trust. That would limit your entitlement to local authority assistance. But, whilst that rule has no theoretical time limit, they can only apply that 'notional capital' if they can make a reasonable link between the transaction and your subsequent claim for care. If you are in reasonable health now, then over the course of time the risk of that will fade. There are also other possible legal arguments against the application of those rules. Each case must be assessed on its merits.

A local authority can also potentially sue for debts but there may be a good defence, if they have misapplied the means-testing rules. Again, it depends upon the circumstances. Sometimes the bankruptcy and insolvency rules can be invoked to set transactions aside. Few local authorities are willing to attempt that. It is potentially complex; it generates bad feeling and such claims may fail in court. You do however need to be aware of the possibilities. There can be no guarantees that there is a fool-proof way of avoiding the value of the home being considered in means-testing. It would perhaps be surprising if there were.

In short the guidance is that you should take care before deciding whether or not to make a gift of any type. Gifts can limit your choices. There can also sometimes be problems with local authority assessments for help with long-term care fees.

### **Are there any alternatives?**

**Wills:** If you want to ensure a particular person inherits the family home (for example a child who lives with you) you can often achieve this objective by making a will in their favour. This means that the asset remains yours until death. That can help you retain your flexibility.

**Lasting powers of attorney:** If you want pass the burden of your concerns over dealing with the family home and other money matters to your children or others then you may not need to make a gift of the property. Lasting powers of attorney allow you to designate others to look after it for you. That can provide you with peace of mind.

**Independent Financial advice:** If you would like to investigate what independent financial advice might offer to you, perhaps in respect of retirement or longer-term planning, please let us know.

### **How can GL Law help you?**

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

**For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email [hello@gl.law](mailto:hello@gl.law)**

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