

Facts about...

Giftng the family home

One of the questions most frequently asked by many of our clients is whether the family home should be gifted to their children.

There are many reasons why you might want to gift your home to your children. Sometimes people feel that making a gift provides peace of mind, certainty for the future or that the gift satisfies a moral obligation. There is also widespread concern that the family home might have to be sold to pay for care fees in the event of a parent going into a nursing or residential home.

Here at Newstead & Walker, we look at some key considerations which may assist you if you are contemplating making a gift of the family home.

Possible benefits of an outright gift of the family home

- A saving of probate fees and costs on your death(s). You might want to reduce delays on the sale of your home after you have gone. A property cannot be sold without a grant of representation and this can take time.
- Possibly avoiding the need to sell your home to pay for care fees.
- Your home may not need to be taken into account if you have to undergo a means testing for benefits or publicly funded services.
- Relief from the worry and burden of home ownership.
- There may be savings in relation to inheritance tax.

Risk of an outright gift of the family home

There are major risks involved in making an outright gift, as follow:

- No guarantee can be given that a transfer of your home will avoid its value being taken into account in local authority means testing. If an individual cannot afford the full cost of care fees then the local authority will make an assessment of his or her ability to pay.
- There are anti avoidance measures in place which allow some gifts to be ignored or even set aside by the Court. The most important factor is the intention behind making the gift. A gift can be challenged without time limit if the Court is satisfied that one of the reasons why you transferred your home was to enable you to claim financial support in the future. Timing is also important – if you made the gift when you were fit and healthy and could not have foreseen the need for care and support then this would count in your favour.
- You may never need residential or nursing home care (less than 6% of people aged 75 to 85 need residential care) so the risks of giving away your home might outweigh any benefits.
- Unless your children live in your home, the capital gains tax main residence exemption will be lost. There may also be no automatic uplift to the market value for CGT on your death, so that if your home increases in value after the gift, there would be capital gains tax to pay.
- If you do eventually need care but no longer have the resources to pay the fees because of the gift, then the local authority may only pay for a basic level of care (e.g. a shared room in a home of its choice) so you might be dependent on your children to top up your fees if you want a better standard of care.
- Once you have gifted your home to your children then they may fail to keep “their side of the bargain”, whether deliberately or through no fault of their own. For example, they may fail to support you, move you prematurely into care in order to live in/sell the property, die without making suitable provision for you, run into financial difficulties due to unemployment, divorce or bankruptcy resulting in you being made homeless or ownership of the property being passed to someone else, they could even lose entitlement to benefits themselves if they own a property in which they do not live.
- There may be no inheritance tax saving while you continue to live in the property.

Giftng the family home (cont.)

Solicitors Duties

It is our duty to ensure that you are fully aware of the advantages and disadvantages of gifting an asset. It is important that you receive completely independent advice from your solicitor, which means that we would need to see you without your children being present, to ensure that you are able to make your decision freely.

How we can help

Ultimately, it is your decision as to whether or not to proceed. At the same time, it is important to be aware of alternatives to an outright gift of your home. For example, you can often ensure that your children inherit the family home by making a Will in their favour. If your aim is to pass the burden of ownership to your children, granting a Lasting Power of Attorney may be a better way of dealing with this issue. If however, you do decide that you wish to transfer your property, a family trust may be a better alternative to an outright gift.

If you would like to consider any of the above options in further detail please contact us now to discuss your situation and how we can help you.

Contact our team now on 01943 461414 or email them to arrange your first appointment.



David Dunphy
david.dunphy@newsteadwalker.co.uk



Danielle Courtney
danielle.courtney@newsteadwalker.co.uk