

Amicus Law

S O L I C I T O R S

CARE FEES PLANNING

Bridgwater
01278 664060

Wellington
01823 755800

Minehead
01643 701888

Yeovil
01935 426047

Martock
01935 822572

Exeter
01392 964930

amicuslaw.co.uk



There are around 450,000 people resident in Care and Nursing Homes in the UK of whom only around 15,000 have their care costs fully funded by the NHS. Around 40 per cent of the 450,000 care home residents in the UK are required to pay towards their own fees because they have built up savings and property over their lives and although many are entitled to have their care fees paid the amount Local Authorities pay rarely covers the full cost of care leaving many residents needing to contribute from their own resources to make up the difference. A single room in a residential home now costs an average of £35,000 a year, and homes that provide nursing care charge more than £45,000. In some areas, fees frequently exceed £50,000. The South West has the second most expensive care fees in the country

Anyone living in England with assets of more than £23,250 has to pay the costs of their care. Once capital falls below £14,250 they *shouldn't* have to contribute from capital, although may still be required to contribute from income. It is assumed that £1 of income arises for each £250 of savings over the minimum threshold.

These are the reasons why so many people are worried about the future and in particular their family home which is often their largest asset and that it could be sold to pay for their care. As a result, many people are considering giving away their homes to their children or family to try and prevent the Local Authority from using it to fund any future care costs.

However, this is not a step to be taken lightly and there are many reasons for not doing so:

1. There is no guarantee that transferring your home will be successful. If it is determined that you have deliberately deprived

your self of a capital asset, your means can be assessed as though you were still the owner of it. The onus is on the Local Authority to prove that you have given away your home with the intention to deliberately deprive them of that home for the purpose of paying for your care fees. Over the last few years, both the Government and the Courts have made extensive rulings regarding the extent to which the Local Authority can assume that in transferring the family home, the transfer was undertaken to deliberately deprive the Local Authority. The guidelines are as follows:

- 1.1 If you are fit and healthy when you make the gift, it is unreasonable for the Local Authority to assume that there has been a deliberate deprivation.
- 1.2 It must be reasonable for the Local Authority to assume that you knew you were going into care in the near future. It is not enough for them to show that you thought that you may go into care in the future. This is very important. In most cases, a transfer is made without there being a real possibility of the person concerned going into care, only a chance.
- 1.3 We can advise you on the most successful way for you to transfer the asset with a minimum of risk for the Local Authority deeming it a deliberate deprivation.
- 1.4 We can also advise you of the best way to carry out the transfer, whether by straightforward gift, discretionary trust or life interest trust.
- 1.5. Under the current legislation, if you meet the following criteria it is likely that you will be able to successfully transfer your home:
 - 1.5.1 you are a fit and healthy person with no health problems which would cause you to be placed in care in the near future; or

- 1.5.2 you are in ill health, but a relative is caring for you on a daily basis thus delaying your entry into care. You would like to transfer the property to this person to reward them for the services that they have provided you in the last few years; or
- 1.5.3 a friend or relative is paying your mortgage and carries out most of the maintenance around the house. You would like to reward that person by making a transfer to them for all their hard work.
- 1.6 No-one can give you an absolute guarantee that a transfer will be successful. We can only advise you on the current legislation. As legislation and your circumstances change arrangements made may need to be reviewed. We cannot guarantee that all the measures we recommend will succeed and you will need to take into account the cost of putting those measures into place against the alternative.
2. If your children were to be divorced or declared bankrupt then the house would be counted as an asset of theirs and could have to be sold, regardless of your consent.
 3. If one or more of your children die before you, your house would pass as part of their estate and could end up being partly or wholly owned by a son or daughter-in-law, your grandchildren, or even a charity, none of whom may be particularly sympathetic to your wish to stay there.
 4. You could also fall out with your children or they could otherwise sell it without informing you.
 5. Once the gift is made the house is no longer yours – you can't get it back. Will your children spend money to maintain it the way you always have?

The only way to be secure in your own home is to continue to own it, remembering that whilst an increasing number of people (and particularly women, who tend to live longer) are ending their lives living in care, the majority of people still live in their own home to the end of their lives. Also remember that if you need care, you will want the most comfortable surroundings possible – if you can pay, you can choose. Will your children contribute towards that in return for having given them your house. Care costs should not simply be seen as a burden – you wouldn't choose the cheapest holiday – why choose the cheapest care. You do not owe your children an inheritance, and you should ensure that you are able to provide for your old age in which ever way that may need to be. However, what we can do is help you look at your care costs and ensure that you are receiving all the help you should be receiving from all sources and that any care funding assessment has been carried out accordingly. We will also make sure you are claiming all relevant benefits.

Accordingly, the following should be taken into account before gifting your property:

1. There is no duty to disclose your assets to the Local Authority, when requested to do so and the Local Authority has no powers to enforce disclosure BUT the onus is on you to show why you should not pay for your care.
2. In a capital assessment the value of the asset is the market value less 10% to cover the expenses of realization. Any mortgage or other secured debt is fully deducted.
3. The value of your home, or your share in it if jointly owned, cannot be taken into account where it is occupied by your spouse, a relative

over 60, or an incapacitated dependent or child. To prevent some or all of the property being taken into account after any joint owner passes away you should make Wills incorporating life interest trusts where the deceased's interest in the house is held in a simple trust so it does not belong to the survivor, but whilst they have the right to occupy the house, if they have to go into a home the half belonging to the first deceased spouse cannot be taken into account as capital and will ultimately pass to your intended heirs.

4. Sold assets are valued at the price obtained with no discount.
5. Joint accounts should be severed to ensure that only the person in care's half share is taken into account.

The following cannot be taken into account in assessing capital:

1. A home occupied by a dependent eg. a spouse, a child under sixteen or being maintained or an elderly person over sixty.
2. Personal possessions.
3. Future interests such as reversionary trust interests.
4. The capital value of an annuity or occupational pension.
5. The surrender value of life assurance policies (including investment bonds).
6. The value of funds held in trust for compensation for personal injury, and also compensation managed by the Court of Protection.
7. The assets of any business (provided the person in care still has an active interest prior to entering care).

Income which can be taken into account is as follows:

1. State and Occupational Pensions
2. Social Security Benefits (except as noted below)
3. Annuity income

4. Income from capital
5. Regular trust income
6. Rental income

Income which must be disregarded is as follows:

1. Food, clothing and personal items
2. Mobility component of Disability Living Allowance
3. Christmas bonuses
4. Council Tax benefits
5. Charitable payment to top up fees
6. Discretionary payments from a trust

In addition to this, we can advise you on the following key matters:

1. Securing a care assessment
2. Eligibility for NHS and/or Social Services funding and obtaining payment.
3. Rights before you are discharged from hospital to ensure that your continuing care needs are arranged to both you and your family's satisfaction, and are funded by the proper authority.
4. Services available to you in your home to help you stay at home longer rather than go into care. Advice can be provided regarding the assessment process both on assessment of needs and capital. We will also advise you on your rights during this assessment process. NHS funding can be available for care provided at home as well as in a care home.
5. The fairness of terms in a residential care contract. This can be very important in ensuring that you are not overcharged for any care that you are paying for.

6. The means test for capital and income. If you own assessable capital in excess of the current limits (subject to annual review) you will not be eligible to receive Local Authority assistance for your care.
7. Availability of Attendance Allowance, Pension Credit and funding from other sources. (NB: Benefits application forms should be requested by phone, not downloaded online, as the claim is then backdated to the date of the request!)

If you do wish to proceed with a gift we can advise you on the best way to do so, whilst at the same time preserving your right to live in the property. We can also refer you to an Independent Financial Advisor who is a member of the Society of Later Life Advisers (SOLLA) to ensure you are obtaining the best return from your capital and who can advise on other products which can assist with the payment of care fees.

For more information or to make an appointment contact David Satchell at david.satchell@amicuslaw.co.uk at our Bridgwater office, Alex Parris at alex.parris@amicuslaw.co.uk for our Wellington and Minehead offices, Tracey Martin at tracey.martin@amicuslaw.co.uk for our Martock and Yeovil offices, Ruth Wijay at ruth.wijay@amicuslaw.co.uk for our Exeter office.

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