CARE HOME FEE PLANNING

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We all work hard during our lives to build up our estates by saving and investing wisely. However, many of us do not plan accordingly to protect our assets we have worked so hard to acquire during our lifetimes. An effective way of protecting our assets is by means of a Will or Trust. A Will is one of the most important documents you will ever write and allows you to decide what happens to your money, property and possessions after your death. However, in Britain approximately 52% of people do not have a Will in place.

According to a Laing and Buisson research report for 2016/2017, the average cost of residential care is an overwhelming £31,200 per year, or £511 per week. Residential care means that you can receive 24 hour personal care and support by staff to look after the residents on a day to day basis. However, if an individual requires medical assistance and the help of trained nurses then they will have to pay for nursing care. The average annual cost for nursing care is a staggering £43,700; or £776 per week.

With those costs it's important to know what assistance if any you are entitled to. When someone needs to move into care they are assessed on a means test to establish whether or not they qualify for financial assistance from the Local Authority. The current thresholds for the assessment of care fees are as followed:

- Assets above £23,250 there will be no local authority support.
- Assets between £14,250 and £23,250 will be tapered and you will pay £1 for every £250 worth of savings towards your care.
- Assets below £14,250 you will receive maximum support. However, if you have a high level of income you may still be expected to contribute towards your care.

Minimising the risks of paying care home fees in later life is an issue which everyone who owns property, no doubt, thinks about at some point in their life. If you own property jointly, whether as a married couple or as cohabitees, it's possible to take steps to minimise the risk of this and to protect at least half of the property value when making your Wills.

Commonly there are two types of arrangements used in Wills to protect a share in the family home should the surviving spouse go into care at a later date. The purpose of this guide is to assist you to make an informed decision and to give an indication of the steps needed to meet your desired outcome.

LIFE INTEREST TRUST

The first of the two options is by way of a 'life-interest trust', this where a beneficiary is given an interest in trust assets for their lifetime, usually the entitlement to receive income, and/or live in a property owned by the trust, and in some cases the trustees can be given powers to advance capital from the trust to beneficiaries. This is sometimes referred to as a 'Property Protection Trust'.

The trust can be written to be flexible to allow the surviving spouse the right move home or downsize as he or she wishes. In such circumstances, the trust simply transfers to the new property, which is purchased in the joint names of the surviving co-owner and the trustees of the deceased spouse's Will, and the deceased spouse's share of any money that is left over is invested so that the surviving co-owner can be paid the interest received on it.

The way it protects part of the property for care home fees is that under the arrangement the first spouse/co-owner to die, leaves his or her share of the home in trust so that the surviving spouse/co-owner has the right to live in the property for life. The share that is protected is ultimately held on trust for the named beneficiaries e.g. children.

As the surviving co-owner never inherits the deceased's share of the property outright, that share is completely protected from having to be used to pay care home fees. When the surviving co-owner dies, the share in the property held in trust passes on to the children or other people named as the ultimate beneficiaries in the original Will.

This arrangement is more secure for the surviving spouse as they have the life interest in the share. However, it does mean that the children or other beneficiaries don't benefit financially until the surviving spouse/co-owner dies.

OCCUPATION RIGHTS

The second option to consider is leaving your half share directly to children or other named beneficiaries as opposed to the other co-owner/spouse. With this option, under the Will the half share is left directly to the named beneficiaries but subject to the surviving spouse/co-owner's right of occupation for so long as such occupation is needed.

When the surviving co-owner gives up occupation (such as moving into a nursing home) the house can be sold and the half share of the deceased co-owner goes to the named beneficiaries.

This option means that the children/named beneficiaries can benefit whilst the surviving co-owner is alive. However, there can be risks if the named beneficiaries get divorced/separate, get into financial difficulties or are made bankrupt whilst the surviving spouse is still resident in the property (as the share in the property is an asset of the named beneficiaries which can change hands and be taken away from them and there can be pressure applied to vacate and sell the property as a consequence).

CHANGING TO TENANTS IN COMMON

In both the above options it is necessary for the house to be held in both names as Tenants in Common, to enable to parties to gift their share into the respective trusts. Therefore in all cases it is important to check how the property is held. When owning a property jointly there are two ways in which it can be owned, either:

1. Joint Tenants; or
2. Tenants in Common.

The type of ownership affects what you can do with the property particularly if one owner dies.

Holding a property as **Joint Tenants** means that you are effectively treated as one owner although you have equal rights in the whole of the property. Should one of you die, the property immediately and automatically passes to the surviving spouse (known as survivorship).

Property held under **Tenancy in Common** means you are treated as separate owners, owning 50/50 or a specified different share in the property. This means that your share in the property doesn't automatically pass to the other owner if you die, it can pass in accordance with your Will, providing greater flexibility.

If the property is not already owned as Tenants in Common, then it is possible to change the way the property is held to Tenants in Common. This is something that we would be able to assist with by drawing up a Declaration of Trust and 'severing' the title with the HM Land Registry. Once severed you can deal with your share of the property accordingly and gift this how you choose under your Will.

WHAT NEXT?

As a Will is such an important part in planning for your future it is important that you seek professional guidance and legal advice from a solicitor when doing so. Our team of experts are able to take you through the process to guarantee you the service is tailored specifically to your needs and advise on all suitable areas. Please contact us on the details below to discuss further.

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