Transfer of Property By Gift

There are various reasons for transferring your property by gift and these may include:-

- **A general affection for your child**

You want to recognise the love and affection you have for your child and wish to do this during lifetime rather than on your death.

- **A feeling of moral obligations towards your child**

You want to feel that you have fulfilled your moral obligation towards your child and should they have to care for you in the future you have already recognised this in advance.

- **A financial obligations towards your child**

You feel that you have an obligation to recognise what your child has done for you and want to thank them for this.

- **Family harmony**

You wish to prevent any disputes in the future between your family and so in making the gift during your lifetime you have the opportunity to sort out any potential rifts which may occur.

- **Avoiding delays on your death**

By transferring your property to your child during your lifetime you are able to reduce the delays on death and prevent them the 'hassle' of sorting everything out.

- **Passing the burdens of property ownership**

You feel that by passing your property to your child you will be able to enjoy a better standard of living yourself as your child will be liable for the costs of insurance, repairs, upkeep which may be difficult for you to fund, especially if you become reliant on your pension.

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Problems That May Occur in Transferring Property by Gift

It is important to be aware of the disadvantages or problems which may occur in making such a gift during your lifetime.

- **Financial difficulties of your child**

Once the property has been transferred to your child it will belong to them outright; therefore if they experience any financial difficulties themselves then potentially your property could be at risk. The property would be taken into account as an asset of your child's and therefore if they became bankrupt your property may be lost to their creditors as their trustee in bankruptcy would have the right to take this into account. It may therefore be that the home you have lived in for many years would be taken away from you and you would be left without anywhere to live and equally without the money that the property was worth to enable you to buy anywhere else. Although this may seem quite an extreme outcome and you may feel it would not apply to you, it isn't something anyone ever plans on and may all escalate from one small problem, for example your child may become unemployed or be forced to take a pay cut, fall ill, be made redundant etc and therefore your child may be unable to keep up with current financial commitments and therefore this could escalate to your child being made bankrupt.

- **Divorce of your child**

As previously mentioned, once the property is transferred to your child, it is their asset and therefore should your child subsequently divorce, it could be taken into account as part of their assets and potentially up for grabs by any spouse in a divorce settlement. An asset which is therefore gifted to a child may subsequently be lost to the family of your child's former spouse. This could make things very uncomfortable if your home was to be taken into account, not only for yourself but also your child and this could cause possible strain on your relationship.

- **Death of your child**

Again this is not something many people would consider but should anything happen to your child before yourself, then potentially your security in your home would be at risk. The ownership of the property would pass under your child's Will (or the intestacy rules should your child not have a Will) and therefore it might pass to somebody which is completely outside of your control.

It may be that somebody you do not get on with or would not want to inherit the property would but there would be nothing you could do to prevent this as your child would be free to leave the property to whoever they wanted on their death.

Should you take a life tenancy to enable you to stay in the house you would still have the right to live their but nonetheless your 'landlord' may be somebody you would rather it not be.

- **If your child is in receipt of means tested benefits**

If your child is in receipt of means tested benefits, it may be possible that these could be reduced or stopped as a result of having the property transferred into their name. If you continue to live in the property, then this should be disregarded in any means tested calculations but if you later went into a care home, then the property could subsequently be taken into account. The value of the property may therefore be swallowed because your child my lose entitlement to benefit and then need to sell the property and spend the proceeds in order to live as they did previously thus defeating the object of you transferring the property in the first place.

- **The mammon effect**

You need to consider that money is very powerful to some people and when the property is received you may find that your child has a strong desire to sell it and spend the money.

This desire can often become overwhelming to some people and even if there was no current intention to do this, it may be that it subsequently occurs. This is particularly important in relation to the transfer of the family home and the next generation.

It may be that your child has varying motivating factors such as their own mortgages to pay, pressing debts, the desire to have nice cars and holidays, having children of their own, and the costs of this impinges upon them so even if you cannot foresee a financial crisis as such, it may be that their greed influences them to try and sell the house and potentially risk your security there.

- **Your child being put under undue influence**

This again is something which should always borne in mind. Even if your child is currently well disposed to you, a third party (such as a new partner, new spouse or anyone else) may not be. This may therefore mean that they put undue pressure or influence over your child and potentially risk the property in that way.

Something else to consider would be if anyone became dependent on drink or drugs as this has caused many problems in the past for couples who have transferred their property to a child only to have it taken away and sold because the child has got into difficulties with addictions.

- **The gift of income generating assets**

It may seem strange to think of your house as an income generating asset but should you go into a care home at a later date, it may be that you would have had the opportunity to rent out your property and therefore generate an income from this which would go towards the cost of your care. By gifting your property to your child during your lifetime, you are gifting a potential income generating asset and this should be considered carefully before making such a gift.

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- **Tax**

Inheritance Tax

Inheritance Tax is currently charged on all estates worth more than £325,000 (2010-2011 rates) subject to any available exemptions which there may be. However, the gift of your property during your lifetime may be taken into account on your death if you do not live seven years after the date of the gift. This may potentially take your estate from being non-taxable to taxable. Therefore advice should always be taken in this regard before any transfer of your property occurs. If you require any more information in this regard, please do not hesitate to contact us and we will be happy to talk through this with you.

Capital gains Tax

If your child decided to sell the house they would potentially be liable for Capital Gains Tax as it may be a second home to them. Therefore any gain which is made during the period from you transferring the property to them selling the property could be taxed subject to any annual allowances or exemptions which they have.

Income Tax

Should your child decided to rent out the property or should you actually decide to pay your child rent for living there, they would be receiving an income and therefore this would be something that they would have to declare to the Inland Revenue.

- **Gift with reservation of benefit**

One thing to bear in mind when you give your house away is that if you continue to live there you are actually considered to be making a gift with a reservation of benefit.

This means that you are giving away the house but continuing to benefit by living there, presumably rent free. The only away around this is by you making the gift and actually paying full current market value rent to your child for the privilege of being able to live in the property. This is something which should be considered as it may be that any gift would be taken into account in many future situations for tax purposes or long term care purposes and therefore a gift with reservation of benefit could potentially set aside in making any financial calculations. Again this is something we can advise on further if you have any concerns.

- **Long term care**

It is thought that only around 6% people aged between 75 and 85 actually need to go into long term care so if this is your main concern it may be useful to know it might not actually become any issue.

If you were to go into a care home in the future, the transfer of the property to your child would not necessarily prevent the local authority from taking the property into account when assessing what contributions you should make towards the cost of your care fees. In other words, they may be able to ignore the transfer of the property if they felt that you had transferred the property in order to avoid paying care home costs and would treat the property as if it was still owned by you.

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This does not necessarily mean that they would force a sale of the property or even put a charge over the property but may just charge you full fees and require those fees to be paid in some way. It may be that your child would therefore have to meet the cost of these extra fees and thus defeat the object of you giving the property to them.

When somebody is placed in residential care, the local authority is required to carry out a financial assessment of that person and then they charge them such sums as they are assessed as being able to pay. The Charging Regulations and the Charges of Residential Accommodation Guide (CRAG) are reviewed annually and can be found on-line.

As from 6th April 2009 the lower capital limit is £14,000 and the upper capital limit is £23,000. Very broadly speaking, this means that if your assets exceed £14,000 but are less than £23,000 you would be required to make a contribution towards your care fees. If your assets were less than £14,000, you are not required to make any contribution at all. If your assets are worth over £23,000 then you will pay for your care in full.

In assessing your position, the local authority would require disclosure of all your assets including those which have potentially been given away by you which would include your previously transferred property. If the local authority then felt that you had given away the asset solely for the purpose of becoming entitled to benefits (i.e. the payment of nursing home fees to which you would not otherwise have been entitled) then the gift may be disregarded.

The local authority is entitled to disregard the gift irrespective of when it was made. There is no definite time limit beyond which the local authority cannot challenge the gift but the longer the period of time between the gift and the claim for charges, the more difficult it becomes for the local authority to establish a claim.

Local Authorities sometimes will put a charge over any property if care fees are unpaid but that would not generally apply to gifts of property. It might be said that it's an advantage of making the gift but equally the gift could be set aside by the local authority if they felt the only reason you had made the transfer was to avoid care home fees (as detailed above).

Many people believe that by transferring the family home, they are able to avoid the need for the home to be sold to pay any charges for residential or nursing care and thus they can secure the family inheritance at the same time. One thing to bear in mind is that there is actually no guarantee and no foolproof way of avoiding the value of the home being taken into account for means testing as there are anti-avoidance measures written into law which enable some gifts to be ignored by the authorities and can possibly even be set aside. These measures do change from time to time and it's unclear how far authorities will actually go to look into this and in order to pursue their costs to which they believe they are entitled.

- **Being abandoned by your child**

Generally when people make a gift of property, they feel that their child will then not honour them with care and support in any case of need. Unfortunately it can often be found that the reverse is true and your child may feel that there is little reason to keep you at home and they should put you into care instead rather than having the burden of looking after you and the house etc.

This lack of support may mean that you have to go into a care home earlier than you would have done or even should you not have ever needed to and your gift of the property to your child may mean that you have deprived yourself of an opportunity to choose a better quality of care because no you longer have the money available to pay for the higher level of chare which would have suited your needs more appropriately.

- **Your security**

Perhaps one of the most important points for your to note is that once you have given the property away (in this case by gift) it belongs to the people you have given it to (your child). Your child could therefore, if they wished, sell the property.

In addition, it is possible that at a future date, your child may be involved in matrimonial proceedings or insolvency difficulties (as outlined above) and as a result of which, third parties may try to establish a claim over a share in the property. That in turn may produce pressure for the property to be sold.

It is extremely important that you consider the above before instructing your solicitor to proceed with the transfer of property so that you are fully aware of the implications of transferring your property by gift.

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