

Giving Away the Family Home

The threat of losing the family home to nursing home costs or to pay Inheritance Tax bills is something that concerns many people. Chris Budd looks at some of the issues.

Giving away the family home to the next generation is something that many people consider, as a way of reducing potential inheritance tax. However, this is fraught with difficulties both for the parents giving the property away and for the children receiving a share in their parents' home. If you wish to give away your property to your children you must bear in mind the following:-

1. Your children may not always be the owners of the property. If they die before you, the property will pass to their estate and their beneficiaries will become the owners. In addition they could also sell their interest in the property or give it away for e.g. tax planning purposes.
2. As the property will legally belong to your children it would be regarded as an asset belonging to them in any divorce proceedings or claims for the recovery of debt, were they to fall into financial difficulties. You may of course have the benefit of an agreement that you remain in the property, but any of these events might affect your security, and cause you worry and anxiety.
3. The house would of course no longer be yours to sell. Therefore, if you wished to moved into a flat or move into a nursing home of your own choice, you would not have the funds from the house available to do this.
4. Giving away an asset and continuing to enjoy the benefit of the asset i.e. continuing to live in the home does not work for Inheritance Tax purposes. The value of the house will still be counted in your estate when you have gone.

5. Entitlement to Income Support and Local Authority Assistance. If you need to go into a home you may need to apply to Social Services (i.e. the Local Authority) for assistance with fees and to the Benefits Agency for Income Support and you must bear in mind the following:-
 - a. If the Local Authority or Benefits Agency consider that you have deprived yourself of the property in order to reduce your assets with a view to claiming assistance or Income Support, they can assess you as if you still owned the property, and refuse the claim.
 - b. If you apply for Local Authority assistance within six months of giving away the property, and the Local Authority can prove that you intentionally deprived yourself of the property in order to gain assistance, the nursing home fees will be recoverable from your children.
 - c. The Local Authority could also attempt to make you bankrupt with a view to the Trustee in Bankruptcy recovering the property and the property therefore being available for payment of nursing home fees. The Trustee in Bankruptcy is, generally, able to recover property given away in the two years before the person become bankrupt. In some circumstances the Trustee can go back for a period of five years.
 - d. Whether the Local Authority will take such action depends to some extent on the gap in time between the gift and applying for assistance and also on whether the Local Authority can prove that the house was given away to deprive yourself of assets. An intention to gain assistance or extra assistance need not be the only reason before it can be taken into account. The longer the gap in time, the more likely the Local Authority are to accept the validity of the gift.
 - e. A house is disregarded for assessment purposes if it remains occupied by a spouse, or a relative who is aged 60 years or over, or a relative who is incapacitated.

6. Capital Gains Tax. Under the Principal Private Residence Exemption a house is exempt from capital gains tax if sold by the resident owner. Once you give your house to your children they will of course not be the resident owners. If they make a gain on the sale they would (depending on the amount of the gain) have capital gains tax to pay.

Jennifer Goda, Solicitor at Henriques Griffiths Solicitors, says anyone considering passing the family home to the next generation should take advice. Transferring assets to the next generation can be achieved in a tax efficient way and protect the parents' rights to remain in the home. Jennifer Goda can be contacted on tel: 0117 9094482 or email jgoda@henriquesgriffiths.com.

Clearly, giving away ones principle place of residence is something to be done only in the most extreme circumstances, and then only after professional advice has been sought.

This article is for general information only and you should seek professional advice in respect of your own personal circumstances.

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