



Gifting the Family Home

Giving the family home to someone else, usually the next generation, is a decision some of us consider for a variety of reasons. As a homeowner, you can gift your property at any time, even if you live in it, although there will be consequences of such actions.

Before transferring ownership of your home, it is important to explore all options, and make sure your rights are protected.

Inheritance Tax Planning

Inheritance Tax (IHT) is paid if a person's estate (their property, money and possessions) is more than £325,000 when they die. This is called the 'Inheritance Tax threshold'. Currently tax is paid at 40% on assets above this threshold. These figures are correct at April 2016 and could change in the future.

How much Inheritance Tax is charged on a home depends on how the person who died owned it and how they passed it on.

Types of ownership

A property can be owned in a variety of ways:

- **Sole ownership**
- **Joint tenants** – where two or more people own the property in equal shares, and the property automatically passes to the other owner(s) on death irrespective of a Will
- **Tenants in common** – where two or more people can own different shares of the property and the property does not automatically go to the other owner(s) on death, but the share can be passed on in a Will

It is possible to change the way a property is owned.

Passing to a spouse or direct descendant

When assets are passed between spouses or civil partners on death, there is no IHT payable irrespective of the value of the estate.

When a home is passed to a 'direct descendant' on death, the Inheritance Tax Threshold will increase. The amount of the increase will be £100,000 in 2017 to 2018, increasing annually.

Gifting the whole and moving out

If a person gifts their home, say to a child, it is known as a “potentially exempt transfer” for the purposes of IHT. It is only “potentially exempt” because the person has to live for seven years following the transfer for the gift to be fully exempt. If the person were to die within seven years of gifting, then the property would fall back into the estate for IHT purposes. (The seven year rule)

Once the property has been given away, the person cannot receive rental income or share in the proceeds. They can still visit and stay for short periods, otherwise the gift would not be considered a “true” gift.

Gifting the whole and continuing to live there

If a person gifts their property, but remains living there, this is called a “gift with reservation of benefit.” This means the person has reserved the right to benefit from the property. For the purpose of tax, the house would remain part of the estate on death, even if the person lived more than seven years.

One way to overcome this is for the person to pay a rent and bills as if they were a tenant. The rate must be the going rate for similar local rental properties, and the seven year rule would apply.

The person in receipt of the rent would need to pay tax on the rental income.

Gifting part

A person can only make a gift of part of their property if they own it on their own, or if it is owned with another as tenants in common. If a person gifted part of their home, then again, this gift could be treated as a “gift with reservation of benefit” unless rent, and a share of bills are paid. The seven year rule would also apply.

Again, the person in receipt of the rent would need to pay tax on the rental income.

However, if the person moves in and shares the bills, the proportion given away will not be included in the valuation of the estate. The seven year rule would still apply.



Care Fees Planning

Before deciding on the amount of financial assistance a local authority will give towards care fees they will carry out a financial assessment. As part of that assessment the local authority will ask about current and previously owned assets.

If the local authority considers that a person has deliberately disposed of their assets so that they will be awarded a higher level of funding, this is called 'deliberate deprivation of assets', and the local authority can reverse the gift and the property will be included in the financial assessment.

It is therefore essential that any gift of a home is not for the primary purpose of avoiding care fees.

Advantages of gifting

Whilst every situation is different, there can be advantages to gifting the family home.

- Inheritance tax and estate planning benefits
- Taking away the burden of home ownership and upkeep
- Possible Incidental effect on local authority assistance for care fees

Disadvantages of gifting

- If gifting the home is an option, there are a number of points to note.
- Once you have signed over your property you will no longer be the legal owner, and will have no control over what happens to it
- If you have decided to remain in the property, if you fall out with the new owners, say your children, you could be forced out. The children could decide to rent or sell the property, or live there themselves.
- The property will be treated as part of the children's assets which could be material in the event of a divorce or bankruptcy. This could also lead to a sale of the property.
- There could be other tax issues to consider for example Capital Gains Tax

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