QualitySolicitors Barwells

# Care Home Fees & Asset Protection

**Background**
When a husband and wife, or partners, own a property jointly it is normally through an arrangement called a Beneficial Joint Tenancy. This is simple and straightforward in that when one partner dies the property is merely transferred very quickly and easily to the survivor. This procedure is called survivorship and happens irrespective of what the deceased partner said in their Will. However, this can have consequences in the long term regarding the liability for nursing and rest home fees for the surviving partner.

Currently, if the surviving partner has to enter into residential care they are deemed to be 'self funding' if the level of their assets exceeds £23,250 (figure as at October 2012). This includes the value of all of their savings but also, most importantly, the capital value of their house. The local authority will therefore expect the person to pay for all of their care until this limit is reached. Below that there will be some assistance and at the level of £14,250 all of the costs will be met by the authority. There are proposals to change these limits in 2016 but there is no legislation as yet.

This means that if care is required you will be expected to pay for it until most of your assets have been extinguished. If the care is to be supplied in your own home, rather than you entering a residential home, the authority will most likely pay for the care but register a charge against your property and reclaim the amounts spent either when the property is sold or after you die. This type of loan arrangement is likely to be extended from 2014 onwards to all people who enter care so their property does not have to be sold straightaway.

**What are the chances of someone going into care?**
Approximately one in three women over sixty five will go into care and the average stay will be three years. Based on average costs of £700 a week the total care costs could easily be over £100,000. It is rarer for men to have to go into care but the costs would of course be similar.

**Are there any ways to mitigate this?**
The answer to this is yes if the planning is done prior to the first death. It is much more difficult, if not impossible, to deal with the situation after the first death as a local authority has provisions that it can use to look at gifts of capital and ignore them for the purposes of assessing care costs under the deprivation of assets rules.

People often think of giving a proportion of their house to their children but this has significant risks if the children were to divorce, die or be made bankrupt. There are also potential tax implications for your children if your property were to rise in value. Most importantly the local authority will ignore the gift for assessment purposes. Therefore, we do not recommend this course of action.

The simplest way is to change the way that the property is held so that each party holds a specific defined share rather than owning the whole property jointly. They can leave this share through their Wills rather than it passing by survivorship. Special Trust Wills are then drawn up to give the surviving spouse or partner the ability to remain in the property, in exactly the same way as before, but have the part of the property that was owned by the first party to die held in what is called a 'Life Interest Trust'. This means that if the surviving party has to enter into care in the future a one half share of their property would be owned by Trustees and is held on Trust for the eventual beneficiaries, normally the children. This means that the local authority cannot assess this part of the property for care home costs. The net effect is that by a small change to the way that the property is held combined with a Trust Will, a proportion of the property, normally half, can be completely sheltered from having to be utilised for the payment of rest or nursing home fees in the future.

**How much does it cost?**
We charge a fee of £500 + VAT for two joint Wills containing suitable Trusts and a further £100 + VAT for the work involved in transferring the Title of the property with the Land Registry.

**Who can be the Trustees?**
Anyone can be the Trustees of such a Trust, it would normally be the surviving spouse or partner plus children or it could be a professional such as QualitySolicitors Barwells.

**Is it an irrevocable step?**
No, the changes to the property could be reversed whilst both parties were still alive and the Wills can be rewritten at any time. However, once the first death has occurred it is best to leave the arrangements in place as to reverse them would be to remove the potential benefit.

**What happens if the surviving party wants to move or release capital?**
This is not a problem. Typically, a one half share of the property would be owned by the surviving party who could move house in the normal way. The Trust would merely follow them to the new property. If the survivor does need to raise capital then they could, but only up to the amount of their remaining share in the property, normally half.

**What do I do now?**
Ask to see one of our Will writing experts at the following locations:-


**6 Hyde Gardens, Eastbourne**
**Tel:** 01323 411505 **Fax:** 01323 410288
**Email:** private.client-eb@barwells.com

**2 Market Square, Hailsham**
**Tel:** 01323 814010 **Fax:** 01323 814014
**Email:** private.client-hs@barwells.com

**19 High Street, Newhaven**
**Tel:** 01273 514213 **Fax:** 01273 516731
**Email:** private.client-nh@barwells.com

**238 South Coast Road, Peacehaven**
**Tel:** 01273 582271 **Fax:** 01273 582272
**Email:** private.client-ph@barwells.com

**10 Sutton Park Road, Seaford**
**Tel:** 01323 899331 **Fax:** 01323 890108
**Email:** private.client-sf@barwells.com


**Home appointments can be arranged if necessary, at no extra cost.**