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Gifting the Family Home

You may be considering making a gift of your home to your children, other relatives or unrelated third parties. This guide sets out in brief detail the options available. It is very important that you consider all the options especially where the family home is concerned, as it may be your main asset and may represent your personal financial security. You may wish to make a gift of the family home for the following reasons:-

General Affection
You may want to recognise the love and affection you have for the proposed recipient in a significant way. This is sometimes done by way of a lifetime gift instead of through your Will.

Moral Obligation
You may want to feel that you have fulfilled your moral obligations to the recipient who may for example be expected to be your carer in the future. It may also be appropriate for certain family promises to be met in a formal way.

Financial Obligations
You may wish to formally recognise the contribution which a family member has made to your property and/or to your life style and personal choices.

Family Harmony
Even in the closest families there can be the potential for disputes especially over property and money related issues. It may be appropriate therefore to avoid problems on death by recognising the issues now and making a gift of the family home during your lifetime.

Avoidance of Delays on Death
You may be concerned to reduce delays on the sale of your property if you die, as a Grant of Representation will be required to sell the property which may take some time to obtain.

Passing of the Burden of Property Ownership
You may want to pass the burden of owning a property on to the next generation, particularly if it is a financial burden as regards insurance and up keep etc. Also as people grow older some may feel that the paperwork related to property ownership is too much and they would wish to pass this on to others.

Reasons for not making an outright Gift of the Family Home

Financial Difficulties of the Recipient
The recipient of an outright gift owns the asset received and it will be taken into account as one of their resources on bankruptcy and may be lost to creditors. Alternatively the recipient may be out of work for some reason and may be pressurised by their partner to sell their share of the property.

Divorce of the Recipient
Assets owned outright are taken into account of as part of the resources of the parties to a marriage or Civil Partnership in a divorce settlement. An asset gifted to the recipient may therefore be lost to the family of the recipient's former spouse or partner.

Means Tested Benefits
The recipient might be in receipt of means tested benefits which could be reduced or stopped as a result of receipt of the asset.

The Recipient who dies Prematurely
An asset given outright would pass by Will or the rules of intestacy to someone whom you might not wish to own a share of your property.

Other Effects
Some recipients may be anxious about receiving a gift of the share of your family home or might be pressurised by an unsuitable partner to realise the asset. Alternatively a recipient may decide having received the asset they no longer need to work or they may consider that there is little reason to help an older person stay at home and consequently condemn them to an early entry into a Care Home.

False Hopes About Tax
Many clients expect that all gifts, including a gift from which they retain a benefit such as their family home, will have the effect of saving inheritance tax or some other tax. On the contrary not only will a gift of your house not save any inheritance tax it will not have the benefit of the Principal Private Residence Exemption to Capital Gains Tax and the recipient may incur a liability to Capital Gains Tax on the eventual sale.

In view of the above criteria we do not usually recommend that the clients make an outright gift of the family home, even to their children. Your home can be dealt with as you see fit and if after having carefully considered the situation do you decide to make an outright gift of the family home, then this is your choice. We can assist you in that transfer and advise on protecting your position, should you wish to continue in occupation, but it will usually be against our advice.

Transferring the Family Home into a Family Trust

Instead of transferring the family home outright during your lifetime you may wish to consider transferring it into what is known as a "Family Trust" which can avoid the pitfalls outlined above.

A Family Trust

A Trust is a relationship which is recognised and enforceable in the Courts. Its details are contained in a Trust Deed which is rather like a rule book. Where there is a transfer of a home into the Family Trust then that property becomes the Trust Fund. It is put into the names of persons called "the Trustees". The Trustees have certain powers over the handling of the Trust Fund for the benefit of the Beneficiaries named in the Trust Deed. You will need to choose your Trustees which should be a minimum of 2 and maximum of 4. It is vitally important that you choose your Trustees wisely. Whilst Beneficiaries can be Trustees it can cause a conflict of interests and also it is not always advisable for you to be a Trustee of your own property.

Trustees have various powers of duties which are outlined in a separate leaflet.

Continuing to Live in Your Home

Under a Family Trust you have, during your lifetime, the benefit of what is presently your home. The home can be sold if you need to move with the proceeds being reinvested in another property for you. Alternatively the proceeds can be invested to generate an income. You do need to be aware that having a property in Trust is not the same as having it in your own name. The Trustees can override your interest in the property if they have good reason to do so and which can be justified in law. However, as the Trustees do not own the property in the Trust outright it offers better security for you than an outright gift to your Beneficiaries.

Disadvantages of a Family Trust

If you need the property to support a loan or to release equity the Trust may not be able to achieve this for you, although this would be the same as if you made an outright gift. If the home is placed in Trust the Buildings Insurance must be transferred into the names of the Trustees because the Deeds are in their names, although insurance brokers do not normally charge for this service. It is also necessary to keep records of any transactions relating to the Trust.

Taxation Matters

Inheritance tax is neither saved nor increased by transferring your home into a Family Trust as you would still continue to live there. The creation of a Family Trust would also not have any implications as far as Capital Gains Tax and Income Tax is concerned, all the time that the Trust consists solely of your home.

The above is only a brief résumé of the factors involved in creating a Family Trust and should not be treated as recommendation to proceed. It is essential that you discuss your requirements with us to ensure that we are fully satisfied that this arrangement is suitable for you and to ensure that the appropriate Deed is drafted which fully meets your needs. The taxation implication also needs to be considered in detail.

Contact Details

If you would like any further advice on Family Trusts please do not hesitate to contact a member of our Private Client Department at any of the following offices:-

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