Planning for Care Costs

The Options in Scotland

For more information or to speak to one of our trained advisers please telephone our Bereavement Legal Services team on 0845 855 4411

The Caesar & Howie Group

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INFORMATION SHEET FOR CLIENTS CONCERNED THAT THEIR CHILDREN'S INHERITANCE MAY BE ERODED BY CARE COSTS

(WITH EFFECT FROM 6TH APRIL 2008)

If you own your own home and you want to make sure that your children inherit it but you are worried that your house might have to be sold to pay care costs, you should take early action to protect your children's Inheritance.

CARE COSTS

If you go into a nursing home, you will be assessed to establish whether you are able to pay your own fees or whether care will be provided to you without payment. The value of your house will be included (except in certain limited circumstances such as the house still being occupied by your spouse or an elderly relative). The local authority financial assessment form will ask whether you have made any gifts within the past 6 months and whether you have disposed of the house you were formerly living in prior to entering the nursing home even if that disposal was many years ago.

BE AWARE THAT IF YOU DISPOSE OF MONEY OR ASSETS PRINCIPALLY TO ENABLE YOU TO QUALIFY FOR HELP WITH CARE COSTS THEN THE LOCAL AUTHORITY CAN LOOK BACK AT THE TRANSACTION, EVEN IF IT TOOK PLACE MANY YEARS AGO, AND THE VALUE OF THE HOUSE, OTHER ASSETS OR CASH CAN BE TAKEN INTO ACCOUNT AS NOTIONAL CAPITAL WHEN ASSESSING YOUR LIABILITY TO CONTRIBUTE TO THE COST OF YOUR CARE.

There are four options which may prevent the value of your home being taken into account in care cost assessments.

OPTION 1 – HOME GIFT

We are often approached by clients wishing to give their house to their children in order to avoid care costs, with the parent retaining the right to live in the house. If it is apparent at the date of the financial assessment that a gift has been made with the purpose of qualifying for free care, the local authority will seek to counter this by striking down transactions carried out within 6 months prior to going into care or treating as notional capital the value of any assets disposed of earlier than 6 months prior to going into care but with a view to qualifying for free care. Councils are now much stricter in these matters than they have been in the past.

If the gift is made for other purposes and, particularly if the gift was made several years previously, it may not be taken into account for assessment of care costs.

If a home gift is proceeded with a number of issues arise. If the house in which you live is owned by others, any one of the owners has a right to demand that the house be sold and the proceeds divided. They may not wish to do so but may be forced to do so in the event of personal bankruptcy or in the event of a divorce the part owned may be taken into account in the divorce settlement or that share in the house may pass to someone else if the owner were to die. If a sale of the house is carried out for whatever purpose, capital gains tax may arise as the house is not the principal private residence of the owners of the house. All of these factors must be carefully considered before proceeding

To protect your own right to occupy the house, it may be necessary to retain a Life-rent or right to occupy the property rent free. Unfortunately one of the effects of such an agreement may be to reinforce the impression that the gift was not in fact a genuine and outright gift but rather an attempt to avoid nursing home fees. In summary this option may work but it is not possible to know for certain until the assessment is being made.

OPTION 2 – TRANSFER OF HOUSE INTO TRUST

A Discretionary Trust can be set up and the house transferred into the Trust. This is sometimes referred to as a Property Protection Trust. This puts ownership of the house beyond your own reach and therefore the asset does not belong to you. At the same time your own right to occupy the house is protected as the Trust will not become bankrupt, divorced or die. However Capital gains Tax may well arise on a future sale of the property and the Council might seek to attack the arrangement as a ruse intended primarily to try to avoid nursing home fees

OPTION 3 – LIFETIME MORTGAGE

Lifetime mortgages are becoming more common as a means of releasing funds prior to your death to supplement your income after retirement, to pay for luxuries such as cars or holidays or, to release funds to be gifted to your children. Lifetime mortgages are particularly popular with individuals whose wealth is mainly tied up in their home but who do not wish to sell their property. There are various schemes available, all of which are designed to enable you to continue living in your own home without having to pay mortgage interest and at the same time to release monies early. As this is a commercial transaction, it is unlikely to be attacked as depriving you of your own assets in order to qualify for assistance with care costs.

As always there are disadvantages. When the house is sold part or all of the proceeds will be payable to the lender and therefore will not pass to your children or be available to you.

On the other hand the money released by the lifetime mortgage is immediately available can be spent or gifted so long as the purpose of any such gifts is not to reduce your assets and qualify for assistance with care costs in your own home. This option should work to diminish the assessment provided the released capital is gifted or spent.

OPTION 4 –IMMEDIATE CARE ANNUITY (CARE BONDS)

Another possible measure is to take out insurance to cover the cost of your care. In the event of going into a nursing home, the insurance would pay a regular stream of income for the rest of your life offsetting the costs of care and meaning that no assessment of your means needs to be carried out. The premium on such insurance can be paid a lump sum at the point of entering care. The premiums are, of course, dependent upon the age and state of health of the applicant. For an older person in poor health, this option could be particularly cost effective. A combination of taking out a lifetime mortgage and using some of the funds released to pay for a Care Bond would mean that a large part or indeed the entire surplus could immediately be released to your family.

Our current view is that the only certain way of dealing with this problem is a combination of options 3 & 4.

THE CURRENT DWP LIMITS FOR CARE COST SUPPORT AT 4TH JUNE 2008 ARE:

Your capital, including notional capital, must have reduced to £21,750 before you can apply for care cost support.

If your capital exceeds the upper limit you will be required to pay the full cost of the care (after taking account of the free personal care element).

If your capital falls between the upper and lower limits you will receive some assistance towards your care costs but will still have to contribute towards them.

If your capital falls below the lower limit, £12,500, your income can applied towards your costs but no further capital will need to be contributed.

We understand this is a complicated area and requires careful thought. If you are concerned about this or would like to find out more please phone Ivor Klayman or Allan MacIntyre on 01506 815900.