

# Asset Protection Trusts

## The myths and the reality

### Introduction

The cost of care has risen dramatically, and often elderly and vulnerable people fear being forced to sell their home to pay for care fees. Also, sometimes parents come under pressure from the next generation who don't want to lose their inheritance.

Added to that there is the fear of excessive probate costs and often a desire to ensure that when inheritance is passed to the next generation it can never form part of any divorce settlement.

This concern has given rise to particular planning through what is called Asset Protection Trusts. But what are they?

The basis of the planning is that if your home (usually your largest asset) is gifted to trust then you don't own it, it is owned by the trustees. Therefore, it can't be used in the means test calculation for care fees, your executors will be able to avoid the need for probate when you die which could be costly and it will never form part of your children's assets if they were ever to get divorced.

But is it that simple?

### Considerations

Before you enter into this type of planning it is important that you are aware of and consider the following:

- There is no inheritance tax "IHT" benefit if you continue to live in the property.
- You will lose control over the property. Although you may be a trustee the other trustees will have to agree to anything that you wish to do to the property.
- You can't simply sell the property to release money, e.g. if you wish to downsize. Any money realised from the property will be trust money and not yours.
- It will be very difficult to use the property to raise additional funds e.g. through equity release.
- Gifting your home in this way could result in your estate paying more inheritance tax as you may not be entitled to additional tax reliefs.

Although you often see Asset Protection Trusts sold as a solution for all, there can be a number of reasons why they don't work, including:

- If the Local Authority deems the trust as being set up to avoid care fees (known as "deliberate deprivation") then the value of the trust will still be included in any means tested calculations.
- Divorce courts would include any benefit likely to be obtained from the trust when considering a fair and reasonable settlement.
- The costs of implementing such planning (and being tied to potential on going costs with the provider of the scheme), may well be in excess of any probate fees you would have incurred.
- Probate may still be required depending upon other assets within your estate.

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### When might a gift of your property to a trust be appropriate?

In some circumstances gifting a property to a trust can be very beneficial, these include when:

- Your adult child has given up a paid job or chance of career advancement to provide full-time live-in care in the expectation of inheriting the home.
- You are no longer able to pay for the upkeep or maintenance of your home and your child(ren) has been funding these in expectation of inheriting the home.
- The home is part of the family business which would no longer be viable if the house was not included such as a farm which may not be able to function without the farmhouse.
- The property is held in your name but was funded or part funded by your child(ren) or another person.

### Summary

- It is the intention behind making the gift that is the most important factor.
- Despite the hype, there is no fool proof way of avoiding the value of the property being taken into account for means testing.
- Be aware: trusts inhibit your ability to deal with your own assets as you no longer own them.
- Be aware: these schemes can be very expensive to set up, with potential ongoing fees and substantial legal fees if the trust is challenged by a Local Authority.
- There are no IHT benefits. Some IHT reliefs may be lost resulting in a loss for the ultimate beneficiaries.
- Even if successful in the avoidance of care fees, basic Local Authority care may not be the care you would like or choose.
- The Government may well retrospectively regard this planning as aggressive and void.

### What should I do?

If you are ever considering gifting your home, either directly or through a trust, you should first obtain specialist legal and financial advice in order to consider all the implications and whether there might be alternative, less expensive and less onerous ways to achieve your objectives. If you would like further information, please contact on 01904 234840 or [wills@pavilionrow.com](mailto:wills@pavilionrow.com).

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