

ASSET PROTECTION TRUSTS

A Decision you could live to Regret



Author – Dave Robinson FCCA APFS MCSI TEP LLAA IMC 1st

What they fail to do is properly inform people about (a) the implications of transferring ownership (b) how a local authority challenge can demolish the trust and (c) how specialist financial planning can help protect capital in a much more flexible and less confrontational way, which will also safeguard a person's independence and freedom of choice.

The value of a home is protected against assessment anyway until all owners have moved into permanent residential care and have been there for at least 12 weeks. A home is also exempt whilst it is occupied by a spouse, civil partner or dependent relative (broadly aged at least 60 or incapacitated). If a home is owned jointly, it is likely that at least half its value can be protected by carefully structuring the joint ownership and writing appropriate Wills.

On the other hand, transferring into trust means giving the legal ownership of your home to trustees. If a trust is going to have any chance of protecting against assessment it will require you to give up all legal rights in the property and to relinquish any say (a) as to how the property is dealt with and (b) any access to the capital value of it. In simple terms it means throwing yourself on the mercy of the trustees (and for the avoidance of doubt if you are a trustee yourself the property will still be assessable).

You also need to know that, if you do transfer your home to a trust, there is always a risk that Social Services will view your action as "Intentional Deprivation of Capital". A Local Authority is legally required to look into why you transferred your home into trust and, if it can establish that you did so in order to avoid the capital value being assessed, it can assess your means as though you still owned the property yourself. The trust though will probably be unbreakable. So, the nightmare scenario is you could end up transferring legal ownership of your home without reducing your assessed contribution to your care costs at all. The standard of proof is not particularly high, all a Local Authority has to prove is that (a) there was a reasonable expectation you might have to pay for care and (b) that avoiding assessment was a "significant motivation".

The final point is that if you do transfer ownership of your home without falling foul of Intentional Deprivation, you will have not been able to access the value tied up in your home or to use it to help support yourself in later life if the need arises. If you don't have any means to meet care and support costs yourself, Social Services are legally required to meet them. But bear in mind that Social Services are legally required to cap what they pay and if Social Services is paying it will also have a huge influence over determining how and where your care and support is provided. You could very well end up with a very restricted choice of care homes offering a standard of care and a location which you would not choose for yourself.

So be warned, transferring your home into trust could be one irrevocable decision which you may come to regret. A Specialist, Society of Later Life Advisers accredited, Independent, Chartered Financial Planner may well be able to ensure the value of your estate is protected for your heirs, without compromising your financial security, your independence or your freedom of choice in any way.

For more information contact Centurion Chartered Financial Planners: enquiries@centurioncfp.co.uk or call 01934 312690