

Wills, Trusts and Probate Briefings

Gifting the Family Home

There are many reasons why someone might want to gift their family home to their children, other relatives or unrelated parties. These include passing on the burden of property ownership and recognising the contributions a family member has made to your property.

Reasons for caution about making outright gifts of the family home

- Tollers do not usually recommend that clients make an outright gift of their home, even to their children. Our reasons for this are:-
 - Financial difficulties of the recipient such as bankruptcy.
 - Divorce of the recipient.
 - Recipient in receipt of means-tested benefits - benefits could be stopped or reduced as a result of receipt of the asset.
 - The recipient who is under the influence of drink, drugs or a third party.
 - The recipient who dies prematurely. All of the above could lead to your home being sold or being owned by someone else.
- False hopes about tax - some clients expect gifts will save them from inheritance tax or some other tax, which is not usually true.

Alternatives to an outright gift

Transferring the family home into a 'family trust'

What is a Trust?

- A trust is a relationship recognised and enforceable in the courts. Its details are contained in a 'trust deed', which is like a rule book. The beneficiaries of this trust will usually be you, as the person placing your home into the trust, and then your children.
- People called trustees will run the trust. They must:
 - disclose any circumstance where they might have a conflict of interest with the beneficiary;
 - not profit from their role;
 - know and act within the terms of the trust;
 - ensure good records and accounts are kept;
 - take independent legal and financial advice at appropriate times;
 - act impartially and fairly between multiple beneficiaries;
 - take reasonable care;
 - act jointly as all trustees are liable for mistakes;
 - not charge fees; and
 - ensure that beneficiaries are kept fully informed.

The benefits of a family trust

- You will know where your property will go upon your death
- A property in a family trust can be sold without a grant of probate
- You can pass the burden of owning a property onto the next generation

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This document was created on 06 May 2010

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- o All paperwork must be dealt with by the trustees
- o You can remain in your home as long as you wish, or until your circumstances change, and can move if you want to
- o If your home is sold then you remain entitled to an income from it
- o The Trustees do not own the property outright - the trust creates a future interest only

Main disadvantages of a family trust

- o Trustee ownership is not the same as owning the property yourself - the trustees have discretions
- o Loans/mortgages - if you need the property to support a loan or mortgage, such as an equity release, the trust will not be able to achieve this for you.

What administrative matters must be considered when a family trust is created?

- o Buildings insurance must be transferred into the trustees' names as the deeds will be in their names
- o Tax matters - tax will become a complex issue but should not have a great impact whilst you still live in the property. You will need to seek legal advice regarding tax matters before creating the trust, during the trust's lifetime and on winding up the trust.

Other options and/or additional documents you should consider

Lasting Powers of Attorney

If you are having difficulty dealing with your bills, insurance and day to day administrative matters, then you should consider a Lasting Power of Attorney. That will give someone else the power to assist you with these matters without actually taking the ownership of any property away from you.

Wills

If you want to ensure that your chosen beneficiary receives your property, then so long as that asset is not sold during your lifetime, you can make this gift by way of Will. In addition, if you are cohabiting, or in a second marriage, and you wish to protect your partner during their lifetime, but ensure that your share of the property passes to your beneficiaries on your partner's death, you can create Wills which deal with this.

Please bear in mind that this is a potentially life changing decision and that in order to fulfil our professional obligations, our solicitors will ask to see you without the potential beneficiary being present, simply to ensure that you are not being forced into taking any action that you do not wish to take.

For an appointment to discuss these issues, please contact our trusts team on 01536 315615.