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SOLICITORS

Deprivation of assets/income and reservation of benefit

To intentionally dispose of an asset out of your estate, depriving yourself of the asset capital, yet maintaining the benefit and use of the said asset. This is frequently used to put your estate in an enhanced position for care home fees and inheritance tax.

When considering transferring an asset out of your name and ultimately your estate, for simply estate planning purposes is achievable. However, it is imperative to take into account all the reasons for such a transfer. If an evident purpose is for the 'avoidance' of incurring an inheritance tax sum or care home fees and the like, then this can cause great difficulties.

A deprivation of assets is when you meaningfully deprive yourself of an asset simply to avoid paying care home fees and a reservation of benefit is when you give something away but continues to use it for your benefit. If this is seen to be the case on any transfer or disposal, then the Local Authority can simply write it back into your estate and anything you have given away to individuals can be taken away from them to be used for your care fees or inheritance tax purposes.

Deprivation does cover a broad range of ways you can dispose of an asset, it is not necessarily just a transfer of property, it can be a lump sum payment as a gift of pay off a debt, putting monies into a trust that cannot be revoked, reducing your estate through substantial expenditure, or selling an asset for less than its true value.

Intention, Timing and Foresee-ability

If you are to dispose of some of your assets with the sole intention of reducing your inheritance tax or care fees, the authorities can try and reclaim this from your estate. They can in effect try and undo the disposal and put the asset back into your name so that even if it is in another individual's name, they have to pay from the funds from any sale.

It is important to gauge your own health status when considering a disposal. The timing of such will be taken into account as well as the foresee-ability of needing the asset capital. For example, if the disposal took place at a time when you are healthy

and could not foresee the need for care or inheritance tax anytime in the near future then it would be construed unreasonable to deem the disposal as a deprivation. Of course, the authorities are unlikely to investigate too far back at previously owned assets; however, the '*ownership-trail*' is always identifiable.

Importantly, you can legally do whatsoever you wish at any time whilst you have capacity with your own affairs and assets but you must always bear in mind the consequences of any such transaction. It is always advisable to weigh up the pros and cons before any decision is made in relation to matters of your estate involving transfers, seeking independent advice and assistance from a professional is recommended.

Care Fees

It is common practice when care homes are assessing people for care home fee contributions to consider whether they have intentionally deprived themselves of assets. Therefore care homes will regularly look back into people's financial transactions to establish whether they have deprived themselves of any large assets.

It is important to note that this is currently the law as it stands; whether this will change in the future in relation to care fees is uncertain. However, what you are trying to do is use the law to estate plan for your future and also preserve for your children's future. The law is likely to change in the future with the new Care Act coming in and full implementation in 2016, however, at the current time we are not exactly sure what the changes will be or how they would take effect or be implemented. All we are aware of is from literature which says that it is likely to make it more difficult to make gifts during lifetime and issues of deprivation will come up much more in the years to come.

Understandably, no one wants to pay care home fees nor a inheritance tax bill from an estate you wish your heirs to inherit, nevertheless, you do not want to make a transfer now for it to suddenly go wrong in the future and cause both you and your family complications and concerns.

Evidently, we do not know what is around the corner for any of us, but it is always important to start estate planning at the first opportunity you think of within your lifetime in accordance with the law and options available for you to do so.