

## I WANT TO TRANSFER MY HOUSE TO MY CHILDREN

We at Peter Dunn & Co. are often contacted by clients, who tell us that they want to transfer their house, usually their main asset, to their children. We need to be able to understand the reason behind such a request, and ensure that clients have considered all of the relevant issues before confirming their instructions.

This document is meant to help discussion with clients as to some of the relevant issues.

### **1. Loss of control.**

The first thing that you must consider is that if you transfer an asset to a third party, whether it is a family member or not, then you have lost control of that asset. If you subsequently want to move house or need to offer the property as security, then you will no longer be able to do so without the permission of the family member to whom you have transferred the property.

We all feel that there is no possibility of a dispute either now or in the future with our family members, but experience suggests that time changes views and attitudes, and it is not unknown for there to be a dispute even between the closest of families, which results in problems with the property at a later date.

### **2. Third parties.**

You must also consider that the circumstances of the family member to whom you wish to transfer the property may well change. What happens if that family member predeceases you? What happens if there are matrimonial problems and a divorce. Your son or daughter's spouse would be able to make a valid claim against the property, which would potentially form part of the matrimonial assets to be subject to a claim in a divorce settlement.

What if the family member ends up with financial problems. A Trustee in Bankruptcy would also be able to claim the property as one of the bankrupt's assets, and would have a much more commercial view on whether the asset should be realised to pay the creditors.

### **3. Inheritance Tax.**

Clients often wish to give their property away to remove the asset from their estate for inheritance tax purposes. However, if you give your property to your family, but remain in occupation, the asset remains in your estate for inheritance tax purposes, because of the reservation of benefit principle.

### **4. Capital Gains Tax.**

This is a consideration for the donee rather than the donor. Whilst the property is your sole or main residence, you do not need to consider the issue of Capital Gains Tax when the property is sold, or even on your death, if it remains in your name. Your sole or main residence is exempt from Capital Gains Tax, even on death. If, however, you transfer the property at this stage to a family member, there would be no Capital Gains Tax at this point, but on a future disposal by that family, if the property is not their sole or main residence, then Capital Gains Tax is potentially payable on the difference between the value at the date of acquisition and the value at disposal.

### **5. Residential care fees.**

Perhaps the most common reason for clients wishing to transfer their home to their family is so that it is not claimed by the Local Authority in the event that they have to go into residential care. When

someone goes into residential care, the Local Authority carry out a financial assessment, and their assets (including their home) may have to be used to pay the fees.

However, disposing of your asset at this stage may not be successful, as there are anti-avoidance provisions.

When the financial assessment is made, if it is established that you have disposed of an asset with a view to avoiding payment of residential care fees, then the Local Authority will treat you as though you still have the asset. There is no time limit involved. It is merely a question of establishing as a fact the reason for the transfer of property.

The question which is often asked is, "If you did not transfer your property to your family to avoid residential care fees, then why did you do it at all?". Clients often find that they have difficulty in providing an answer to this question.

This document is not intended to provide full advice on the subject, but merely to give you some food for thought, and to operate as a discussion document.

Full advice will be given in interview, taking into account the full circumstances of your case.

**Peter Dunn & Co.**  
Solicitors

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