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Legal Group

LIFETIME ASSET TRUST

A PROVEN STRATEGY FOR AVOIDING PROBATE AND PROTECTING THE FAMILY HOME FROM CONTRIBUTING TO CARE FEES

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Introduction

Figures from the Liberal Democrats revealed that nearly 50,000 homes are forcibly sold each year to pay for the cost of long-term care.

Almost one third (31 percent) of the 155,000 self-funders who are currently in residential care were forced to sell their homes to cover the costs.

The figures also reveal that since 2005 the number of people in care who have been forced to sell their homes has increased by nearly a quarter (23 percent) – an extra 9,000 people.

Parents are also seeing nest eggs built up as intended inheritances for their children decimated over short periods once in care.

With advance planning this need not be the case. There are ways to protect the family home for the next generation.

Local authorities around the country are experiencing severe financial constraints in funding care. This in turn leads to more aggressive assessment and the failure of steps that are taken too late. This is a highly specialised area and for those wishing to address this issue, professional advice is essential.

Professional Advice

This document is for general guidance and information only. Specific situations require specific advice and this guide is no substitute for the appropriate advice.

The Background

Many older people are actively seeking ways of preserving their estate to pass it on to the next generation and to avoid it being decimated by care home fees.

Giving the home away to the children has in the past been seen as the solution. However, it is not to be recommended. There is also the misconception that if you give the home away at least 6 months before going into care, the local authority cannot touch it. There is a so-called "six month rule" in the legislation but this is a rule applicable to a specific circumstance and cannot be relied upon. In the real world, many local authorities have rules of thumb; some will only look back over one or two years but others may look back over a much longer period. "Deliberate deprivation" is a real concept that can make things more difficult.

Cash strapped local authorities are cracking down on people who they think are trying to avoid paying care fees and they are becoming increasingly sceptical about people saying gifts were made due to the "natural love and affection" for their children. This document covers these various points briefly and highlights a straightforward approach to sheltering the family home through a planning technique that has a proven track record.

The Basic Position

Statistics show that 1 in 3 women and 1 in 4 men go into care. If you have any assets above £14,000 (2010/2011), you will start paying for your care from your own funds. Average care home fees cost between £20K and £50K per year. You or your family may have to sell your home to pay for care.

Those who cannot afford to pay privately for care must ask the local authority for full or partial funding towards the costs. The resident has free choice of home, subject only to the fee level quoted, which is usually within the funding arrangements available to the local authority.

Both income and capital resources are assessed.

- **Above capital of £23,500 no contribution will be made by the local authority.**
- **Below £14,250 a full contribution will be made by the local authority.**
- **Between £23,500 and £14,250 there is a partial contribution made by the local authority.**

Virtually all income is assessable. The principal exception relates to part of an occupational pension in certain circumstances. A small amount of income (currently £21.90 per week) is not assessed currently, amounting to little more than pocket money. This is literally intended to cover toiletries, hairdresser etc.

This document concentrates on the family home. It is not a guide to other potentially assessable capital. Advice on other capital is available on request via Affinity's strategic partners.

The Home

The starting position is that the home counts as capital for financial assessment purposes. The value of the home, or an interest in it, is taken account of as a capital asset. It comes into the reckoning for means testing at its market value, less 10% (assumed costs of sale) and less any mortgage liability. Once sold, the home simply comes in as cash.

The home is disregarded under certain circumstances:

- During the first 12 weeks of care.
- During temporary or respite care.
- If it is occupied by a husband, wife or unmarried partner.
- If it is occupied by a close relative over the age of 60 (or under the age of 16).
- If it is occupied by a relative under the age of 60 who is disabled.

The local authority may, **at its discretion**, ignore the value of the house if it is the permanent home of a carer or in certain other limited situations. Although most people believe that the local authority's discretion should not to be relied on.

The Best Solution

The solution is to ensure that the home is not personally owned on your entry into care. The local authority's financial assessment can then legitimately and properly be completed on the basis that the home is not a capital resource of the resident.

This solution involves putting the home into a lifetime trust (Lifetime Asset Trust), so that the trustees are the owners.

Features of the Lifetime Asset Trust are:

- The former owner has a guaranteed right of occupation in the property for the remainder of his or her life. The trustees, usually the children, cannot evict the former owner in any circumstances.

- The former owner has the ability to direct the trustees to sell the property and to buy a new property of the former owner's choice. The former owner can therefore move property or trade down. The trustees have no choice in the matter. Of course in the rare circumstance where the new property might be more expensive, the trustees can only be required to buy the new property if the additional capital needed is provided by the former owner.
- If the property is sold, for whatever reason, and a new property is not bought, usually when the former owner is entering care, then the proceeds of sale can be invested and the former owner will normally receive the interest or income earned on the invested capital.
- On the death of the former owner (or second of two former owners), but not before, the property, or its proceeds of sale, passes to the chosen beneficiaries; the trust at that point operates similarly to a Will.

Married Couples

The trust described above is equally applicable to married couples as to single owners. In fact, married couples entering into the strategy will have the additional advantage that they do so at a time when if one of them went into care, the home could in any event be disregarded due to the other spouse still living in it.

Deprivation

Local authorities have a number of remedies available to them to counter planning in certain circumstances. The primary remedy available to local authorities is "deliberate deprivation". A local authority may treat a resident as possessing the home, or an interest in the home, if it can show that the resident deprived himself or herself of the home for the purposes of decreasing the amount that he or she may be liable to pay for his or her care accommodation. ie the local authority can still treat the resident as owning the home and can financially assess the resident accordingly. This is known as 'notional capital'.

Anyone considering using this strategy can avoid the appropriate deprivation rule in one of the two following ways:

A. Through the passage of time after the transfer into trust. The time elapsed between putting the home in trust and entry into care may be of such a length that the local authority realistically cannot show deliberate deprivation. The absolute minimum would be two or three years but there is no set period or no period in respect of which a guarantee could be given.

B. Putting the home in trust at a time when entry into care is simply not an issue, is not on the horizon and is not currently something reasonably foreseeable as something that might happen. The planning relies on this scenario; that the home is put in trust at a time when entry into care, and the financial consequences which might follow, is simply the usual distant worry that most homeowners have at the back of their mind, even though still only a minority of the population end up in care.

Time Limit

There is much misinformation in circulation of various safe time limits. A typical example of the confusion is that a gift of the home will be safe from assessment by the local authority from 6 months, 1 year, 2 years, 3 years, even up to 7 years (the latter being very often confused with the relevant IHT risk period) prior to entry into care.

The most dangerous time limits suggested by various advisors is 6 months, which is presumably drawn from the legislation. However, anyone relying on that time limit is taking a very big risk in presuming this time limit will be acceptable to the local authority.

The answer is to make the necessary arrangements at a point well in advance, as set out in B above.

Advance Planning

If planning is done well enough in advance then the various remedies and anti avoidance provisions available to the local authority can be avoided. The question is simply whether the measures taken ensure that assets are not brought within the financial assessment on entry into care.

For married couples, until the first death the family home carries a "disregard" status, therefore any planning undertaken while both spouses are alive is even more likely to be secure from local authority attack. If a husband and wife undertake long term planning while both are alive, their planning should usually be successful.

Risks

Comment was made earlier about the possible folly in gifting the home to the children. The risks are immense:

- **Divorce** - the home may be the subject of the child's divorce settlement.
- **Bankruptcy** - the child may go bankrupt and the house become available to the child's trustee in bankruptcy.
- **Pre-decease** - if the child dies before the parent, the ownership of the home may go off in the wrong direction (eg son or daughter in law).
- **Sale** - the house will be the children's to sell.
- **Finance** - a child could attempt to raise finance on the house.
- **Pressure** - children notoriously consider the parent to be ready to enter care long before the parent himself or herself.

The trust strategy described by this document avoids these risks.

Inheritance Tax (IHT) and Capital Gains Tax (CGT)

The trust strategy is entirely neutral for IHT and CGT. It neither improves, nor worsens the tax position.

- CGT - there is no CGT to pay when the family home is put into the trust (due to principal residence relief) and there is no CGT to pay when the home is sold by the trustees after entry into care or by the children after the parents' deaths (due to the trust version of principal residence relief).

- IHT - in the trust the home remains in the settlor's estate for IHT. *For married couples using the trust strategy, the strategy is compatible with the use of two IHT nil rate bands (currently 2 X £325,000 = £650,000) for IHT planning.*

Probate Benefits

The Lifetime Asset Trust offers the significant benefit that the home will no longer be subject to Probate on death. This means that, apart from the significant costs savings, the home can be sold or transferred by the trustees immediately after death with no Probate formalities at all. This is potentially a massive advantage. In some cases, depending upon the other assets of the estate, it may mean that Probate can potentially be dispensed with completely.

A recent Which? Report comparing Probate fees gave the average rate of a High Street provider to administer an estate of 2.79% including vat and disbursements. This means that the cost for Probate for a £200,000 property would be £5,581.

Extract from the WHICH? Report on Probate fees (July 2010)

Estate Value >>	£100,000	£200,000	£300,000	£400,000	£500,000	£600,000
Banks average – 3.53% of estate	£3,525	£7,050	£10,575	£14,100	£17,625	£21,150
Solicitors average – 2.06% of estate	£2,056	£4,112	£6,168	£8,224	£10,280	£12,336
Combined average of above – 2.79%	£2,791	£5,581	£8,372	£11,162	£13,953	£16,743
Affinity's fees - typical	£1,763	£3,526	£5,186	£7,052	£8,815	£10,372

- Probate is required on all estates with assets over £5,000, even when there is a Will.
- Probate takes, on average, 6 months with a Will and 2 years without
- Assets are usually frozen on death until Probate is granted - the means the house cannot be sold straight away

The fees for setting up a Lifetime Asset Trust can therefore be justified on Probate cost savings alone.

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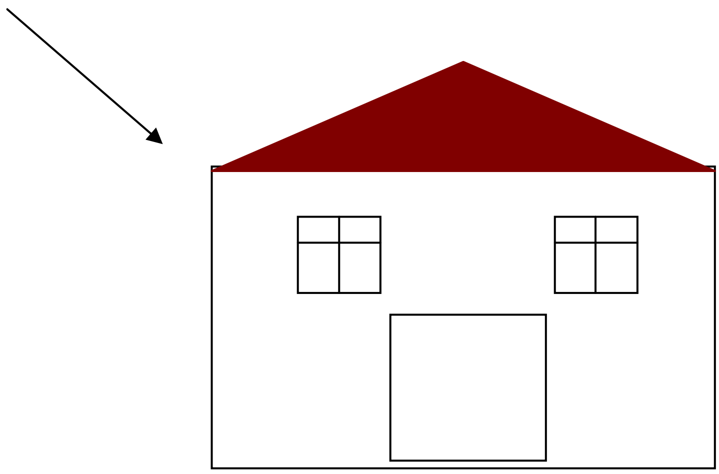
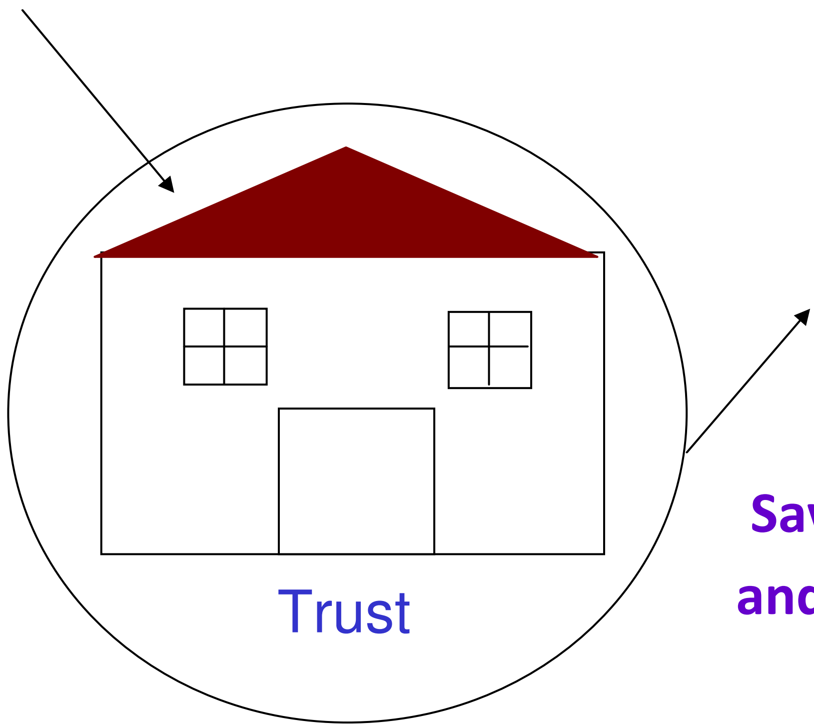
Trusts

When Parents Die

Children have to wait for Probate to be granted before they can sell the property (6 months or more?)



PARENTS PUT THEIR HOUSE INTO TRUST FOR THEIR CHILDREN



Children can sell the property immediately when parents die

Saving Probate fees and several months' delay