

SOLICITORS FOR  
OLDER PEOPLE  
**SCOTLAND**



In partnership with



# Planning for Care Costs

The Options in Scotland

For more information or to speak to one of our trained advisers please telephone our team on 0800 152 2037

**Solicitors For Older People Scotland**  
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## INFORMATION SHEET FOR CLIENTS CONCERNED THAT THEIR CHILDREN'S INHERITANCE MAY BE ERODED BY CARE COSTS

(WITH EFFECT FROM 6<sup>TH</sup> APRIL 2010)

If you own your own home and you want to make sure that your children inherit it but you are worried that your house might have to be sold to pay care costs, you should take early action to protect your children's Inheritance. Some terms need explanation.

### CARE COSTS

If you go into a nursing home, you will be assessed to establish whether you are able to pay your own care costs or whether care will be provided to you without payment. Care costs are substantial and can at the time of writing this guide be around £600 per week or more – consequently any long term care costs will be very significant. The value of your house will be included (except in certain limited circumstances such as the house still being occupied by your spouse or an elderly relative). The local authority financial assessment form will ask whether you have made any gifts within the past 6 months and whether you have disposed of the house you were formerly living in prior to entering the nursing home even if that disposal was many years ago.

#### **“Capital and the value of your home (Information provided by DWP.)**

If you have over £22,750 in capital you will be assessed as being able to meet the full cost of your care. Your capital will be counted as generating an income according to the following table:

<b>Amount of capital you have</b>	<b>How your capital is used to calculate your contribution to your care home fees</b>
<b>Over £22,750</b>	You will be assessed as being able to meet the full cost of your care
<b>Between £14,000 and £22,750</b>	Capital between these amounts will be calculated as providing you with an income of £1 per week for every £250 of your savings
<b>£14,000 or under</b>	Your capital will be ignored in calculating how much you have to contribute to the cost of your care

If you own your home then it will usually be counted as capital 12 weeks after you move permanently into a care home. The value of your home will not be counted as capital if certain close relatives still live there.”

If you are assessed as needing nursing home or residential care, you will be asked to claim any Income Support benefits or Pension credit you may be entitled to and these will be taken into account in a means test to ascertain how much you can afford to pay. Normally you will have to pay all your income towards the

fees, less £22.30 per week you must retain for personal expenses. You will receive your free personal care and nursing care allowances as appropriate to set against any fees you may have to pay.

**BE AWARE THAT IF YOU GIVE AWAY MONEY OR ASSETS AND THE LOCAL AUTHORITY TAKE THE VIEW THAT THIS WAS DONE PRINCIPALLY TO ENABLE YOU TO QUALIFY FOR HELP WITH CARE COSTS THEN THE LOCAL AUTHORITY CAN LOOK BACK AT THE TRANSACTION, EVEN IF IT TOOK PLACE MANY YEARS AGO, AND THE VALUE OF THE HOUSE, OTHER ASSETS OR CASH GIVEN AWAY CAN BE TAKEN INTO ACCOUNT AS NOTIONAL CAPITAL WHEN ASSESSING YOUR LIABILITY TO CONTRIBUTE TO THE COST OF YOUR CARE.**

## INHERITANCE TAX (IHT)

If you leave part of your estate to your children the first part, commonly called the “Nil Rate Band” (Currently £325,000), is free of IHT but everything over this is taxed at 40%. Everything left to your spouse is free of IHT

If you want to leave your house or your interest in the house to your spouse and thereafter he or she leaves it to your children your spouse’s estate will include his or her share and the share you left to him or her. Will the combined amount exceed the Nil Rate Band for IHT? If so, there is an IHT problem which you should discuss further with us as the following advice in relation to care costs could be undesirable from an IHT mitigation point of view.

If the combined estates of you and your spouse do not exceed the Nil Rate Band then there should be no problem about IHT. There is however a further complication: “Pre-Owned Asset Tax” may apply.

## PRE OWNED ASSETS TAX (POAT)

POAT came into effect on 6<sup>th</sup> April, 2005 and may affect your choice of options.

If you simply retain assets such as your house in your own name until you die, they will be subject to IHT, if applicable, when you die.

If you give away assets but retain a benefit such as giving away your house but continuing to live there (gift with reservation of benefit) then you are treated for IHT purposes as though you still own the asset when you die.

However, if IHT does not apply, then POAT may. Unlike IHT, POAT is not a tax on the capital value of the property. Instead, you pay an annual income tax charge based on the rental value, assuming a standard residential tenancy where the lessee pays all rates and charges and the landlord handles repairs and insurance. It is unusual for tax proposals to be retrospective- however in this case, even if the benefit arose as long ago as 17<sup>th</sup> March, 1986, if the benefit continues to arise after 5<sup>th</sup> April, 2005, POAT may apply. Please ask about **POAT** if you think this may affect you.

This can only be properly considered as part of a broader review of your tax position by a specialist adviser.

## OPTIONS

There are four options which **may** prevent the value of your home being taken into account in care cost assessments.

### OPTION 1 – HOME GIFT

Give your house to your children, retaining the right to live in the house. The date of a gift of a house is the date of registration of the disposition transferring ownership in the Land or Sasine Register. If an application for assistance with care costs is made within 6 months of the date of transfer of assets, the assets may be clawed back, or the recipient made liable for the cost of the giver's care. If you have borrowed money from family to buy the house and this has been properly recorded, only the surplus of value over and above the sums lent would be gifted. However, if you have a normal mortgage security over the property, other than an expired Discount security to the Local Authority, a gift can be made subject to the security if the title is in the Sasine Register but this is not possible if the title is in the Land Register. Generally speaking any title granted to a purchaser after 1985 in Glasgow and the west of Scotland, 1992 in West Lothian and 2000 in Midlothian, including Edinburgh, will be in the Land Register.

If the gift is made for other purposes and, particularly if the gift was made several years previously, it may not be taken into account for assessment of care costs.

This can be done in a number of ways, but the way which usually suits most people is

- (a) A Disposition (transfer of ownership) of the property with a reservation of a liferent (keeping the right to live there for the rest of your life) and
- (b) A Power of Attorney in favour of someone reliable, to enable the liferent to be given up in future if you no longer need it.

A number of other issues arise. If the house in which you live is owned by others, any one of the owners has a right to demand that the house be sold and the proceeds divided. They may not wish to do so but may be forced to do so in the event of personal bankruptcy or in the event of a divorce as the part owned may be taken into account in the divorce settlement or that share in the house may pass to someone else if the owner were to die. If the house is sold for whatever reason, capital gains tax may arise as the house is not the principal private residence of the owners of the house. All of these factors must be carefully considered before proceeding. Please ask about **Homegift** for further information.

To protect your own right to occupy the house, it may be necessary to retain a Liferent or right to occupy the property rent free. IHT and POAT, if applicable, may make this unattractive. In addition, one of the effects of such an agreement may be to reinforce the impression that the gift was not in fact a genuine and outright gift but rather an attempt to avoid nursing home fees.

For recipients of a "Homegift" as described above, there are two potential problems. Firstly, the possibility that they may have to pay care costs or sell or mortgage the house to pay care costs or convey back the house if the DWP successfully establish that the transaction only took place to enable the giver to qualify and it was within six months before benefit was claimed. Secondly, there is the potential Capital Gains Tax problem. Please ask about this if you think it may affect your situation.

In summary, this option may work but it is not possible to know for certain until the assessment is being made. This can be a complicated exercise, especially if it involves Inheritance Tax Planning, but it is something that you have to do while you are well and in full possession of your faculties.

#### OPTION 2 – TRANSFER OF HOUSE INTO TRUST

A Discretionary Trust can be set up and the house transferred into the Trust. This puts ownership of the house beyond your own reach and therefore the asset does not belong to you. At the same time your own right to occupy the house is protected as the Trust will not become bankrupt, divorced or die. There are various other benefits from completing such trusts and these may include taking the property out of an assessment for care costs, therefore avoiding the need for it to be sold. However Capital Gains Tax may well arise on a future sale of the property and the local authority might seek to attack the arrangement as a ruse intended primarily to try to avoid nursing home fees as in Option 1. **Please ask about Discretionary Trusts** if you think one may benefit you. IHT and POAT, if applicable, may make this unattractive.

#### OPTION 3 – LIFETIME MORTGAGE

Lifetime mortgages are becoming more common as a means of releasing funds prior to your death to supplement your income after retiral, to pay for luxuries such as cars or holidays or, to release funds to be gifted to your children. Lifetime mortgages are particularly popular with individuals whose wealth is mainly tied up in their home but who do not wish to sell their property. There are various schemes available, all of which are designed to enable you to continue living in your own home without having to pay mortgage interest and at the same time to release monies early. As this is a commercial transaction, it is unlikely to be attacked as depriving you of your own assets in order to qualify for assistance with care costs.

As always there are disadvantages. When the house is sold part or all of the proceeds will be payable to the lender and therefore will not pass to your children or be available to you.

On the other hand the money released by the lifetime mortgage is immediately available and can be spent or gifted so long as the purpose of any such gifts is not to reduce your assets in order to qualify for assistance with care costs. Subject to that, this option should work to diminish the assessment.

#### OPTION 4 –IMMEDIATE CARE ANNUITY (CARE BONDS)

Another possible measure is to take out insurance to cover the cost of your care. In the event of going into a nursing home, the insurance would pay a regular stream of income for the rest of your life offsetting the costs of care and meaning that no assessment of your means needs to be carried out. The premium on such insurance can be paid a lump sum at the point of entering care. The premiums are, of course, dependent upon the age and state of health of the applicant. For an older person in poor health, this option could be particularly cost effective. A combination of taking out a lifetime mortgage and using some of the funds released to pay for a Care Bond would mean that a large part or indeed the entire surplus could immediately be released to your family.

## TO SUM UP

**Option1** can be effective against a care cost assessment and **option 2** is at the moment proving effective for the same purpose. However we cannot say for certain that assessments will be made in the future under the same legal and practice framework as they are currently being made. We cannot therefore say for certain that both options will always work in the future. For that reason clients using either of these options have to accept there is a certain risk involved. In both options 1 and 2, the longer the passage of time before the assessment, the better.

**Our current view is that the only certain way of dealing with this problem is a combination of options 3 and 4.**

Please note that we do not advise on tax matters unless specifically agreed in a terms of engagement letter and clients must take their own advice on tax matters. We are of course happy to refer you to tax advisers, and to cooperate with any tax advisers you instruct.

We understand this is a complicated area and requires careful thought.

If you are concerned about this or would like to find out more please call one of our members on 0800 152 2037.