

ANTHONY HARRIS & COMPANY

CARE HOME FEES PLANNING

We are frequently asked to advise /comment upon the possibility of “protecting” family assets (held by husband and wife either jointly or individually) against long-term care expenses. A discretionary trust by Will, combined with a severance of the joint tenancy in the family home is a fairly orthodox mechanism designed to “ring fence” those assets falling into the discretionary trust (in particular the half-share interest in the home of the first spouse to die) against assessment for state/county funding for care home fees. Although the scheme has a reasonable prospect of success, even that cannot be guaranteed. This is because the funding authority may have the right to challenge the Will on the basis that it provides inadequate provision for the surviving spouse. Such a challenge is possible, but not particularly likely.

Wills typically leave everything to the surviving spouse on the first death, with ultimate division between the younger generation on the second death. The upshot is that the survivor will have full and unfettered control over the family assets which the two of them currently enjoy jointly.

A potential difficulty with the discretionary trust regime is that the survivor will effectively lose “control” over a significant proportion of the current family assets, whether limited to a half-share in the property or not. If he/she wishes to utilise capital (in particular) then the trustees will need to exercise a discretion, and the general law is that a discretion must be exercised unanimously. The potential for deadlock in such cases is accordingly significant. One also has to consider the fact that if the intended scheme is implemented the survivor might have to ask for access to assets/funds to which he or she would otherwise be entitled, as of right.

It is also instructive to consider the effective risk of capital loss through care home fees. There are two important statistics in this context. Firstly, apparently only one in twenty people go into residential care. Secondly, the average turnover rate for a bed in a nursing home is six months (or slightly less). You will see from those two factors in combination that the true risk of substantial capital loss is not high, although we would be the first to accept there is indeed a risk.

We can, if you wish, prepare revised Wills incorporating discretionary trusts with a view to mitigating care home fee liability, but it is important that clients are objectively advised both on the merits and the potential drawbacks of any such scheme.

Please ask for Anthony Harris

Our normal office opening hours are:- Monday to Friday 9.00 - 1.00 & 2.00 - 5.00

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