

“ Plain speaking legal advice ”

**Frequently asked questions**  
**Giving away your home**

“ Plain speaking legal advice ”

### **If I give my house away can I still treat it as my own?**

By giving your home to another person or persons you are giving away your legal title to it. The house will belong to them absolutely and will become part of their estate. It will be subject to their Wills, their matrimonial affairs and disputes. It will be theirs to mortgage, or sell as they wish. It may also give them a liability for Capital Gains Tax purposes.

### **How can I ensure that my house goes to a particular person or persons?**

This can be easily achieved by making a specific gift of the house to that person (or persons) in your Will.

### **If I give my house away will I avoid Inheritance Tax?**

By making a lifetime gift you must live for 7 years to avoid the value of the property coming back into your estate for Inheritance Tax purposes.

If you have given away the legal title to your home but wish to continue living in the house then you have made a gift with reservation of benefit. This means that the 7 year rule does not apply and the value of the property will always come back into your estate for Inheritance Tax purposes. However for all other purposes the gift is effective. For example if the owner of the house dies it is part of their estate for Inheritance Tax purposes notwithstanding that because of the gift with reservation it is also part of your estate for inheritance tax purposes. **This sort of gift is potentially disastrous.** The only exception to this is where the gift made is of a part share of your home to a child who has always lived with you at home and who will continue to do so. If the child should leave home then the exemption ceases.

If your estate is likely to exceed the threshold for the payment of Inheritance Tax there may be alternative ways of avoiding payment

### **How can I take away the worry of maintenance and repairs?**

If you appoint an Attorney then this is the sort of thing that they can help you with or deal with for you.

“ Plain speaking legal advice ”

### **If I give my house away will I avoid nursing home fees?**

The local authority are able to overturn a transfer where it can be shown that a significant part of your objective in transferring your house was the avoidance of residential care home fees.

#### What are the possible benefits?:

1. A possible saving of Inheritance Tax and administration costs on your death.
2. Avoiding the need to sell the house to pay for residential care home fees.
3. Avoiding the house being taken into account for means-testing for other benefits or services.
4. Passing the financial responsibilities of the house to someone else.

### **What are the possible risks?**

If you are over 60 and give your house away then there is a very high risk that the Local Authority will take the view that the significant object of the gift was to avoid it being sold to fund your residential care home fees.

The value of the house (or any other asset that you may be contemplating giving away) may still be taken into account under the anti-avoidance measures in relation to means testing.

*“A resident may be treated as possessing actual capital of which he has deprived himself for the purpose of decreasing the amount that he may be liable to pay for his accommodation”.*

The Local Authority :-

1. Has a discretion whether to apply the rule.
2. Will only consider questions of capital when the resident ceased to possess capital which would otherwise have been taken into account.
3. Will need to consider whether the resident actually owned the property.

[www.herrington-carmichael.com](http://www.herrington-carmichael.com)

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

“ Plain speaking legal advice ”

4. Will need to establish the purpose for disposing of the asset. Avoiding the charge need not be the main motive but it must be a significant one.
5. Consider the timing of the disposal. If it takes place at a time when the donor is fit and healthy and could not have foreseen the need to move into residential care it would be unreasonable to treat it as deliberate.

ALSO REMEMBER :-

1. You may never need residential care.
2. If you do need residential care but do not have the resources to pay the fees, the Local Authority may only pay for a basic level of care, so you will need to depend on relatives to pay a top up for better accommodation.
3. The person or people you have give your home to may not keep their side of the bargain.

---

Watchmoor Park  
Camberley  
Surrey  
GU15 3YL  
tel: 01276 686222

4 Station Road  
Aldershot  
Hampshire  
GU11 1HU  
tel: 01252 322451

3&4 Market Place  
Wokingham  
Berks  
RG40 1AL  
tel: 01189 774045

[www.herrington-carmichael.com](http://www.herrington-carmichael.com)

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.