
Deprivation of Assets: Local Authority care and support

If you require means-tested residential care, then under the current rules set out in the Care Act 2014, the Local Authority will assess your assets to see what, if any, your financial contribution to that care should be. They will assess both your income and your capital.

Any steps you take in relation to giving assets away, should be considered cautiously. This is because you must not act in a way that will be treated as deliberately depriving yourself of assets that should be considered in the financial assessment.

What is Deliberate Deprivation?

Deliberate deprivation is where you have intentionally decreased your overall assets to reduce the amount you have to pay towards your care. Contrary to popular belief, there is no time limit after which such deprivation will be disregarded by the local authority. Some people believe there is a seven-year rule, but the seven-year rule is about inheritance tax and not care home fees.

Although there are many reasons why you might want to give an asset away, if the local authority can show that you knew you would need care and support, and have reduced your assets to reduce the contribution that you'll have to make towards the cost, then they can take steps to recover money owed.

How am I Assessed for Care?

If you need residential care, the local authority will look at your income and capital to decide how much you should pay towards the care fees. They may also take into account the value of your home. Based on current figures, your capital is assessed as follows (correct as at August 2016):

- Over £23,250 and you'll be self-funding
- Between £14,250 and £23,250 and you'll have to pay a contribution
- Less than £14,250 and this will be ignored for the means test

Your income will also be assessed.

The Care Act 2014 and Annex E

Annexe E of the statutory guidance to the Care Act 2014 states:

People should be treated with dignity and respect and be able to spend the money they have saved as they wish – it is their money after all. Whilst the Care Act 2014 represents an important step forward in redefining the partnership between the state and the individual, it is important that people pay the contribution to their care costs that they are responsible for. This is key to the overall affordability of the care and support system. A local authority should therefore ensure that people are not rewarded for trying to avoid paying their assessed contribution.

Examples of Deprivation

Deprivation covers a broad range of ways that you might transfer an asset out of your possession and Annex E provides some examples:

- A lump-sum payment to someone else, such as a gift
- Substantial expenditure has been incurred suddenly and is out of character with previous spending
- The title deeds of a property have been transferred to someone else
- Assets have been put into a trust that cannot be revoked
- Assets have been converted into another form that are disregarded in the financial assessment, for example personal possessions
- Assets have been reduced by living extravagantly, for example gambling
- Assets have been used to purchase an investment bond with life insurance

What is 'Deliberate'?

To be deemed 'deliberate', the local authority must show that avoiding care and accommodation charges was a significant factor, or the only reason, that you deprived yourself of an asset. It is important to remember that avoiding care and accommodation charges does not have to be the only factor and the local authority may conduct its own investigations to decide whether deliberate deprivation has occurred.

Annexe E provides a list of factors that the local authority will take into account:

- Whether avoiding the care and support charge was a significant motivation

- The timing of the disposal of the asset. At the point the capital was disposed of, could the person have a reasonable expectation of the need for care and support?
- Did the person have a reasonable expectation of needing to contribute to the cost of their care?

The guidance confirms that it would be unreasonable for the local authority to decide that deliberate deprivation has occurred if, at the time the disposal took place, the person making the disposal was fit and healthy and could not have foreseen the need for care and support.

Recovering Assets

If the local authority find that deliberate deprivation has occurred, they have a range of powers to put them back into the position they would have been, had the deprivation not occurred. This includes recovering the charges from the person who is now in possession of the asset. They can also start County Court proceedings against you to recover debts, if you do not pay, or if you have misrepresented information to them about your financial position.

If you'd like more information call **01904 866139**
or email hello@rochelegal.co.uk



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