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# Giving Assets Away

Many people consider passing on significant assets to their children or loved ones during their lifetime, and the reasons for making such gifts vary. Whether you are proposing to gift property or another significant asset, there are consequences which should always be considered.

This factsheet highlights some of the main considerations when thinking about gifting, but you'll still need to take independent legal advice, based on your own circumstances.

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## Why?

First of all, you need to consider the reason why you are considering the gift, as sometimes there is a better way of achieving the objective.

Some of the most common reasons for giving away assets that we encounter are:

- Giving away the asset will give peace of mind.
- It may provide certainty for the future or satisfy a moral obligation.
- You'd prefer to give the gift now, rather than leaving it in your Will.
- You want to avoid tax or nursing home fees in the future.

If the gift is simply to relieve you of the worry of owning the asset, you could consider making a Lasting Power of Attorney instead. If you'd like more information about Lasting Powers of Attorney, please let us know.

In terms of avoiding tax or nursing home fees, many people believe that simply giving away your home will prevent it from being taken into account for inheritance tax or nursing home fees, but it's not as straight-forward as that.

Whilst there are ways in which it is possible to achieve these objectives by gifting, more often than not making a gift of your main home for these reasons can be impractical and may not achieve the desired outcome anyway. The rules around this are complex however and so you'll need to take independent advice based on your own particular circumstances.

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We can advise you on the benefits and risks of giving away your assets during your lifetime so you can then make an informed decision. Below are some of the benefits and risks that you'll need to consider, although these points are by no means exhaustive

## Benefits

Some of the benefits include:

- There could be savings in relation to Inheritance Tax and administration costs on your death.
- You may avoid having to sell assets to pay for care fees.
- You'll be relieved of the burden of responsibility of the asset.
- It may reduce delays in administering your estate after you have died.
- It may avoid having to apply to the Court of Protection for a Court Order in the event that you become unable to manage your own affairs due to accident.

## Risk

Some of the risks include:

- The value of your home may still be taken into account anyway, for inheritance tax and nursing home fees.
- You might have to pay inheritance tax during your lifetime.
- You'll no longer own the asset and so you won't be able to sell it in the future if you need to release some money from it. You'll also no longer control the asset and so if you've given away your house, you may be unable to downsize in the future.
- If you need to move into residential care, you may no longer be able to afford to pay for the standard of care that you'd like. Where the State funds care for people because they have limited assets of their own, the local authority only has to pay for basic care. This means that you may have less choice about which care home you'll move into and the standard of care that you'll receive.
- If the person who receives gift to gets into financial difficulty or divorces, the asset which now belongs to them would be taken into account in any financial or divorce settlement. If the gift is of your house, you could end up homeless.
- If the relationship between you and the person who has received the gift deteriorates, this could lead to family disputes.

There are also plenty of tax considerations that need to be thought through. For instance, whilst a gift of a particular asset may reduce an inheritance tax bill, it could create a capital gains tax bill instead.

As with anything, you'll need to carefully consider the reasons why you are contemplating make the gift, the type of asset you are planning to give away and your particular circumstances, before making an informed decision about what to do.

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