

Giving Assets Away

Many people consider passing on significant assets to their children or loved ones during their lifetime. There could be a number of reasons for doing so, but if you are thinking about giving property or other valuable assets away, you should not do so quickly or lightly. Unforeseen consequences, such as tax liabilities, may arise if you are not prepared for the full implications of the gift.

This help guide highlights some of the main things to account for when considering a gift of significant assets.

What are your reasons for making the gift?

First, you should explore why you are thinking of making the gift. This will help you to focus on the objectives you are trying to achieve with it. We find that some of the most common reasons for giving away assets include:

- Knowing that your loved one will own the asset and enjoying the peace of mind this brings.
- Satisfying a moral obligation.
- Preferring your loved one to receive the asset now, rather than leaving it to them in your Will.
- Avoiding tax or care home fees in the future.

Would making the gift achieve your objectives?

This is where matters can get more complicated. If the gift would meet your objectives, does it also come with unwanted consequences? Is there a better alternative for meeting your objectives, rather than giving the asset away as a gift?

When considering these questions, there is no substitute for specialist legal advice tailored to your own circumstances. However, some general examples are provided below for ways in which alternative arrangements may be preferable.

Giving up control of an asset instead

If making the gift is simply to relieve you of the worry of owning the asset, you could consider making a [Lasting Power of Attorney](#) instead. You could make a Financial Lasting Power of Attorney, appointing a friend or family member to handle the day-to-day decisions relating to the asset, whilst still retaining ownership of it.

A Lasting Power of Attorney is a way of appointing people you trust to make decisions on your behalf. For more information about Lasting Powers of Attorney, have a look at our separate [help guides](#) on the subject.

Avoiding tax or care home fees

Many people believe that simply giving away your home during your lifetime will prevent it from being considered for inheritance tax or for means-tested care home fees. However, it is not as straightforward as that.

With inheritance tax, lifetime transfers of assets can sometimes attract an immediate tax charge. More commonly, some or all a transferred asset's value may still be included in the value of your estate if you do not outlive the transfer by at least seven years.

For more information on this, have a look at our [help guide](#) on 'Reducing your Inheritance Tax.'

Similarly, with care home fees, there are complex rules to deter people from giving away assets solely for the purpose of avoiding their inclusion in the means assessment. If someone is found to have deliberately deprived themselves of their assets to pay lower care fees, the value of those assets may still be taken into account.

Our blog post: ['Can I give assets away to avoid care home fees?'](#), explains more about care fees and deliberate deprivations of assets. We also have a [help guide](#) on the subject.

Whilst there are ways in which you can reduce inheritance tax and care home fees through gifting, more often than not, giving away your main home for these reasons can be impractical – and may not achieve the desired outcome anyway.

The benefits and risks of giving an asset away

Below are some of the possible benefits and risks that you should consider when planning to gift an asset. Please note, however, that these points are by no means exhaustive and you must take advice from a professional.

Some of the possible benefits include:

- Reducing the inheritance tax and administration costs payable on your death.
- Avoiding the need to sell assets to pay for care fees.
- No longer having responsibility of the asset in question or any burdens that come with it.
- Reducing the time taken to administer your estate after you have died. Fewer complicated assets, such as houses, in your estate generally mean less time is required to manage the estate after your death.

- If you become unable to manage your own affairs due to incapacity, the asset would not need to be dealt with for you as it would be owned by someone else. This means it would not need to be part of any [Deputyship Order](#) made by the Court of Protection, or, if you had made a Power of Attorney, it would not need to be handled by your attorneys.

Some of the possible risks include:

- Having the value of your home still taken into account for inheritance tax and care home fees, as described above.
- Incurring an inheritance tax during your lifetime from the transfer of the asset.
- No longer owning the asset and so being unable to sell it in the future if you needed 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.
- Having the asset owned by someone else. If the person who receives your gift 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 you gifted them your house, you could end up homeless. Additionally, if the relationship between you and the recipient deteriorates, they would have no legal obligations towards you regarding the asset. Again, if the asset is your home, this could have serious consequences.
- Being unable to afford the standard of care you would like, if you require care in future. When a person's care is funded by the state due to owning 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 would move into and the standard of care that you would receive.
- Incurring a capital gains tax charge. Whilst a gift of a particular asset may reduce your inheritance tax bill, it could create a charge to capital gains tax instead. Even if you are not selling the asset, the transfer could be considered as a 'deemed disposal' for capital gains tax purposes.

There are many different aspects to be considered. Some of these considerations, such as those relating to tax, can be technical and difficult to anticipate without specialist knowledge. If you are considering gifting an asset, it is important to seek advice about your own situation so that you can make an informed decision.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

Roche Legal ©