AMES KENT

solicitors

Gifting your property

Possible advantages of gifting your property to a relative or friend (the donee)

- Saving of inheritance tax, probate fees and costs on your death. However, in most cases, if you continue to live in the property after you have gifted it and do not pay full market rent, you will not save inheritance tax as you have kept a "reservation a benefit";
- Avoiding the need to sell the property to pay for charges such as residential or nursing care home fees, thus securing the family's inheritance;
- Avoiding the value of the property being taken into account in means-testing for other benefits or services.

Possible risks of gifting your property to a relative or friend (the donee)

- The value of the property may still be taken into account by the Local Authority if you require means-tested benefits on going into residential or nursing home as there is no time limit for the property to be "safe";
- If you do eventually need nursing or residential home care but no longer have the resources to pay the fees because of the gift then the Local Authority may only pay for basic care (e.g. a shared room in a home of its choice and not yours) so you may be dependant on relatives to top up the fees if a better standard of care is desired;
- The capital gains tax exemption (principal private residence exemption) will apply to the gift but may be lost thereafter and on the sale of the property there may be capital gain tax payable by the donee on any gain made between the date of the gift and the date of the disposal;
- You may never need residential or nursing care so the risks of giving away your property may outweigh potential benefits;
- The donee may fail to keep their side of the understanding, either deliberately or through no fault of their own. For example, they may:
  - fail to support you (e.g. by not topping up care home fees)
  - seek to move you prematurely into a care home in order to occupy the property themselves or to sell it
  - die suddenly without making suitable provision for you
  - run into financial difficulties because of unemployment or divorce or become bankrupt and in consequence be unable to support you
- The property may be lost on the bankruptcy divorce or death of the donee resulting in you being made homeless if you are still living there;
- There may be no inheritance tax saving whilst you continue to live in the property, yet there could be liability for inheritance tax if the donee dies before you and leaves a taxable estate;
- The donee may lose entitlement to benefits and/or services (e.g. social security benefits, legal aid) due to personal means-testing if not living at the property;
- If you remain in the property and wish to move you will have to obtain the donee's consent and they may say no or they may ask for some of the capital left over if they buy a cheaper property for you to live in.