

YOUR RIGHTS

HOLD ON
TO YOUR
HOME

Afear spreading among older people is that they will lose their home to pay for care when they can no longer manage for themselves. Although this has always been a danger, new laws which came into effect in April 1993 mean that the risk is now greater than it used to be.

It is a risk you can avoid with careful planning. Local authorities are bound by the law and to protect your family's inheritance it is important to understand the rules.

Can they take my home?

If you go into care, leaving your home empty the social services department of the local council will count the value of it as part of your capital assets. Anyone with capital of more than £8,000 is not entitled to any help with care home fees which may mean that you have to sell your home to pay any such fees.

However, there are several circumstances in which the value of your home may be ignored. If your husband or wife still lives in the home its value is completely ignored. The same rule applies to a partner who lives with you as your spouse.

If a relative, aged 60 or more or who is incapacitated lives there, the value is also ignored. The definition of relative is quite wide and includes parents, children, uncles, aunts, cousins and their spouses or partners. The definition of incapacitated includes anyone claiming invalidity benefit, disability living allowance, attendance allowance or severe disablement allowance. Remember, they only have to be over 60 or incapacitated, not both.

If someone lives there who does not come into any of these categories, the value of the home may be ignored at the discretion of the local council. This is not likely to be used widely but it should include someone who has given up their own home to look after the person who now needs the care, or to allow an elderly companion to stay there.

If your home is owned jointly with someone else, the value of your share will usually be ignored. The other party

cannot be forced to buy your share and its value to anyone else is effectively nil.

If none of these considerations apply, normally the value of your home will be counted as an asset and you will get no help towards the cost of the care. While you are selling your home the social services will meet the fees but they will expect reimbursement from the proceeds of the sale.

However, you can choose not to sell it. Some people decide to rent the property out, funding the care home fees from the money raised. The social services cannot force you to sell your home and they still have a duty to provide you with care. So if you do not sell, your debt to the local council will simply grow week by week. After a while the council will almost certainly take what is called a legal charge on your home. This means the council has the right to have the care home fees it has paid on your behalf reimbursed from the proceeds when your home is eventually sold or when your estate is wound up.

Can I give my home away?

If you give your home away with the intention of increasing your entitlement to help from the social services department, they can assess you as if you still owned the property. This means that they would not pay anything towards your fees. However, they would still be obliged to provide accommodation and in practice you would simply incur a growing debt. That creates two possible problems.

First, if you give property away within six months of going into the home, the local council has the legal power to recover the assets from the person you gave them to. But this power can only be used if you gave away the assets less than six months before you went into the care home.

However, the council may take a tougher line. Once your debt reaches £750 they can initiate bankruptcy proceedings. Bankruptcy law also allows assets to be recovered from people you have given them to. But even these powers are limited. Assets given away more than five years before the bankruptcy is declared by the



court (remember, that will be some time after going into the home) are completely safe. Assets given away between two and five years before the bankruptcy will usually be safe.

But to even begin to recover any money the social services department has to show what your intention was in giving it away. Only if part of your intention was to increase the help you got from them can they count the assets you have disposed of. If your sole intention was to provide for your grandchildren or to avoid Inheritance Tax, or any other reason, they cannot touch it.

Planning for the future

Losing your home to the council is a much bigger risk than Inheritance Tax. The first £150,000 of your estate is exempt, the rest is taxed at 40 per cent. But if you have to go into a care home only £3,000 is ignored and the local council will eventually take the rest to pay your fees. Despite this, most financial planners and advisers who are competent to

advise about Inheritance Tax are not able to advise about protecting your home from the council. But planning is essential – or your inheritance will go to the council rather than to your heirs.

If you are now in your sixties or seventies and are concerned to preserve your assets for your heirs, you should consider giving away your home to them long before you think you may have to go into a care home. And you can, under present law, quite safely put a clause in the deed of gift to ensure that you have a lifetime right to live there. This clause would not work for Inheritance Tax, however, as there are special rules which stop you giving something away then benefiting from it. Under these rules you are taxed as if you still owned the property. But there is no such rule either in community care or bankruptcy law. The only drawback is that the people you give the property to may have to pay some capital gains tax when they eventually sell it.

Before giving your property

away you must seek legal advice. Many solicitors may not be familiar with the details of the relevant laws but they should be able to check for you. Details of the law are contained in the box at the end of the article.

Income

It is not only your capital that is at risk when you go into a care home. If you have less than £8,000 in savings, the social services department will assess your income and decide how much you can contribute to the cost of your care, which may be several hundred pounds a week. Only your own assets are assessed, not those of your wife or husband or any other relative. Your income is generally counted in full. But some items are ignored, including any interest on your capital, £10 of any war disablement pension and the mobility component of the disability living allowance. The rest of your income will be normally taken to contribute to the costs of the care but you will be allowed to keep £13.10 a week towards your personal expenses.

Capital below £3,000 is ignored. But capital between £3,000-£8,000 is used in the assessment by adding an amount to your weekly income. The amount is £1 for each £250 or part of £250 above £3,000. Savings of £3,005 count as £1 a week, £3,600 counts as £3 a week. The maximum, £8,000 counts as £12 a week.

The balance of the cost of

the care is then paid by the social services department. However, they will only pay for the kind of care they consider reasonable. Often that means a shared room in a home they choose. If you or your relatives decide that you want a different home or a better standard of room, you have to pay the difference.

Married couples

If you are married the social services department can ask your spouse to contribute to the cost of your care. However, the rules under which they can do this are complicated. They rely on part of the National Assistance Act 1948 which states that married partners are liable to maintain each other. But the local authority has no right to apply the same means test to the wife or husband of a person in a care home. They can only assess what is "reasonable" for the spouse to pay.

This process will involve discussion and negotiation and if no agreement is possible the local council cannot enforce any payment - it will have to go to court. Meanwhile, the spouse requiring care has a right to be provided with care and should not be affected by the negotiations at all. Anyone in difficulties should ask to see paragraph 11.006 of the CRAG Guide (see box below).

Another problem for married couples occurs when the partner with the major share of the income, usually the husband, goes into a care home.

Normally, all his income, apart

Explaining the rules

The current rules were introduced by the National Health Service Community Care Act 1990. This Act amended existing legislation, particularly the Health and Social Services and Social Security Adjudication Act 1983 (see section 21 for the six month rule for recovering assets you have given away) and the National Assistance Act 1948. Some detailed rules are in regulations made under that Act, particularly the National Assistance (Assessment of Resources) Regulations 1992 and 1993.

The rules are explained to local authorities in a publication from the Department of Health called *Charging for Residential Accommodation Guide* - CRAG. Your local council should have a copy.

Age Concern has recently published a book called *Finding and Paying for Residential or Nursing Care* by Marina Lewycka, £5.95, from bookshops. Free factsheets are also available from Age Concern, Astral House, 1268, London Road, London SW16 4EJ.

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