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Legal Notes – More on Gifts



In my previous article on gifts, I explained some of the fundamental legal aspects about making gifts. This article continues the subject.

Full instructions are needed together with certainty that the client fully understands the implications of their proposed transaction.

There may be more effective ways of achieving the same aim. For example, if someone wants to make sure a particular person inherits an asset, this may be better achieved by making a (new) Will.

If the intention of making the gift is to try to avoid tax, then all the tax implications need to be investigated and explained. There are several relevant taxes here: Capital Gains Tax (“CGT”), Inheritance Tax (“IHT”) and the Pre-Owned Assets Tax charge to Income Tax.

There are complications if the donor retains a benefit in the asset after giving it away because of the Gifts with Reservation of Benefits rules for IHT. These can mean that there is both CGT to pay on the gifting of the assets and then IHT on their eventual death, even after more than 7 years from the date of the gift.

If someone is seeking relief from the worry or responsibility of owning an asset, granting a Lasting Power of Attorney to a family member may be a better way of dealing with that worry.

If someone wants to avoid the value of the asset being taken into account for means-testing, such as for long-term care, then advice is needed as to the consequences of such a gift, including tax implications and the risk of Social Security in relation to ‘intentional deprivation of assets’. By this the person making the gift is treated as still owning the asset for the purposes of assessing their eligibility for State or Local Authority financial help towards the cost of care (whether at home or residential).

There are any number of other complicating factors, these include the following examples: where the client is infirm or disabled and an adult child has given up a paid job or chance of career advancement to provide full-time, live-in care in the expectation of inheriting the home on their death; where the client is unable to afford the upkeep or pay for necessary improvements on their home and a child has been funding these in expectation of inheriting the property; where the home is a farmhouse without which the farm might not be able to function without; where the asset is in the client’s name but originally funded by their child.

A proper assessment of the implications of making a gift is best achieved by listing the pros and cons and thinking carefully about tax and future care costs. A later request to return a gift may fall on deaf-ears.

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If you require advice on this matter please contact Miranda on 01328 710210. If you require advice on any other legal matter please telephone our Wells office on 01328 710210 or email law@hayes-storr.com.