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# BURTONS SOLICITORS

## DEPRIVATION OF ASSETS

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## ***Deliberate Deprivation of Assets***

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### **WHAT IS DELIBERATE DEPRIVATION OF ASSETS?**

A deliberate deprivation of assets is where an adult has intentionally deprived themselves of assets for the purpose of decreasing the amount that they may be liable to pay towards the cost of meeting their needs for care and support or their needs for support. It is important to note that the 7-year rule regarding deprivation of assets is a myth, and that there is no time limit. This means that local authorities can consider assets given away at any time.

### **HOW DOES MY HOME AND SAVINGS AFFECT WHAT I PAY FOR SOCIAL CARE?**

If your local authority assesses you and decides you qualify for social care, such as getting extra help at home or moving into a care home, they'll do a financial assessment (also known as a means test) to calculate how much you should pay towards the fees.

Your income and savings will be taken into account in the financial assessment. If you need to move into residential care, your property could be taken into account.

Some people consider giving away their home or money to relatives, friends or charities, so that they won't be taken into account in the financial assessment. However, the local authority might decide this is a deliberate deprivation of assets.

### **WHEN IS IT RELEVANT?**

It is only relevant where an individual is relying on their care to be funded by the local authority. The local authority will ask for financial recourses going back to the time the individual first had care and support needs.

If the local authority suspects that an individual has deliberately deprived themselves of assets, they must establish that:

- (i) There has been a disposal of capital (e.g. cash - shares);
- (ii) The purpose was to avoid a charge for care fees;
- (iii) The adult had a reasonably foreseeable expectation of needing care and support and that those needs would come at a cost.
- (iiii) That your intention to avoid paying care charges were significant, or the only reason, you had disposed of an asset.

Having a clear reason for disposing of capital should not be considered as a deliberate deprivation of assets. It is important the local authority is told of the reason, have considered it and have either accepted or rejected that decision.

The local authority will look carefully at:

- (a) Conversions of assets into disregarded assets such as the purchase of a capital investment bond;
- (b) Gifts;
- (c) Assets settled into a trust;
- (d) Transfer of ownership of property;
- (e) Payments of unsecured debts or substantial expenditure;
- (f) Sudden change to living extravagantly;
- (g) Gifts of income;
- (h) Gifts from an occupational pension.

Other courses of action, such as selling an asset for less than its true value, may also be seen as deprivation. The onus is on you to prove you no longer possess an asset.

Transferring income or capital asset does not necessarily mean it is not taken into account in your financial assessment. If the local authority find that deliberate deprivation has occurred, the income or asset can still be 'notionally' included in the calculation.

'*Notionally*' means that, even though you may not have that capital asset anymore, you are treated as if you do still possess it. For example, if you are over the pension credit age and defer applying for pension or annuity, you could be treated as having notional income.

## **GIFTS WITH THE RESERVATION OF A BENEFIT**

A Gift with the Reservation of a Benefit (GROB) is a gift that you give away but continue to benefit from. For example, if you gifted your home to your children but continued to occupy it.

This gift would not be exempt from Inheritance Tax even if you lived for seven years after the gift was made, and the amount of tax payable may not be the same as it would have been if you retained ownership; it could be higher. There could also be the loss of the main residence exemption for Capital Gains Tax (CGT) purposes. There

are also other situations where CGT may apply to yourself or to the person you are making a gift to.

There are exemptions to the GROB rules, however careful consideration and specialist advice should be taken, as Pre-Owned Asset Tax (POAT) has been introduced by HMRC as a preventive measure for transactions attempting to get around the GROB rules.

If any transfer or disposal seems to be a GROB intended to be a deliberate deprivation of assets, then it can simply be written back into your Estate by the Local authority. This means that anything that has been given to any individual can be taken away from them to pay for your care fees or for inheritance tax purposes.

## TRUSTS

A Trust is a legal arrangement whereby assets such as property or money are transferred to Trustees who manage the assets on the beneficiary's behalf. It is important to note that when disposing of an asset into the Trust, you are no longer the owner and therefore will have none to limited control over the asset. There are several types of Trusts, each with their own advantages and disadvantages.

Trusts can be effective in protecting assets from care costs however it could be seen as a deliberate deprivation of assets, as during your means test Local Authorities will consider assets you currently own as well as assets you have previously owned.

In addition to this, there could also be Inheritance Tax implications dependant on the type of Trust and the value of the assets, such as anniversary charges and exit charges. An immediate charge to Inheritance Tax could also be triggered by transferring your home into a Trust if the value exceeds the Inheritance Tax allowance. A transfer into a Trust could also be a chargeable disposal for CGT purposes.

If you are benefiting from any assets that you have placed in a Trust this could also be seen as a GROB, which could raise further issues regarding tax and deliberate deprivation of assets. Before considering whether to put your assets into a Trust, you should speak to a professional to explore your options.

## EQUITY RELEASES

An equity release is for people who are 55 years and older wishing to unlock the value of their property and turn it into tax-free cash. There are different forms of equity release, each coming with its own set of benefits and drawbacks. The most common type is a Lifetime mortgage which is a long-term loan secured against your property.

Although, the immediate tax implications of an equity release can appear attractive there are other considerations you should take into account, such as interest accumulation, future housing needs and impacts on means-tested benefits.

If equity is released and you give the funds away, i.e., to your children, the Local Authority may say that there is a deliberate deprivation of assets. If they think you have not fully disclosed any resources or have deliberately placed assets beyond the reach of a financial assessment, you may have to pay for services yourself in full even if your capital is now below the threshold.

#### **EXAMPLE OF WHERE DEPRIVATION HAS NOT OCCURRED:**

Max has moved into a care home and has a 50% interest in a property that continues to be occupied by his civil partner, David. The value of the property is disregarded whilst David lives there, but he decides to move to a smaller property that he can better manage and so sells their shared home to fund this.

At the time the property is sold, Max's 50% share of the proceeds could be taken into account in the financial assessment, but in order to ensure that David is able to purchase the smaller property, Max makes part of his share of the proceeds from the sale available.

In such circumstance, it would not be reasonable to treat Max as having deprived himself of capital to reduce his care home charges.

#### **EXAMPLE OF WHERE DEPRIVATION OF ASSETS MAY BE CONSIDERED:**

Emma gives her daughter Imogen a painting worth £2,000 the week before she enters care home. The local authority should not consider this as deprivation as the item is a personal possession and would not have been taken into account in her financial assessment.

However, if Emma had purchased the painting immediately prior to entering a care home to give to her daughter with £2,000 previously in a savings account, deprivation should be considered.

#### **WHAT IF I GAVE MY MONEY OR HOME AWAY A LONG TIME AGO?**

The timing is important. The local authority will look at when you reduced your assets and see if, at the time, you could reasonably expect that you would need care and support. The Care and Support Guidance does recognise that people should be treated with dignity and respect and be able to spend their money as they wish. If you were fit and healthy and couldn't have imagined needing care and support at

the time, then it might not count as deprivation of assets. They then have to decide based on all the case facts and clear reasons, which could be challenged.

If your local authority decides you've reduced your assets to avoid paying care home fees, they might still calculate your fees as if you still owned the assets

The nature of the rules on deliberate deprivation of assets mean it is not possible to predict with certainty whether the local authority will raise the issue during a future financial assessment. An authority will not usually advise you beforehand how it might treat a particular transfer at a later date. The rules relate to the moment your financial assessment happens.

## **LOCAL AUTHORITY DUTIES AND DEPRIVATION**

This seems to mean an authority should still provide services even if deprivation has been established. In this situation, they may seek to recover the extra costs they have paid towards care and support services as a debt from you or from the person who now possesses the assets.

The rules for care home funding work differently. If you have deprived yourself of assets and are treated as having notional capital above the upper threshold, the local authority do not have a duty to arrange your care, unless you lack mental capacity and have no one to assist you.

If you have mental capacity but cannot arrange your own care and have no one to help you, the local authority should use its discretion to ensure your needs are met and you are not put at risk.

## **RECOVERING CHARGES FROM A THIRD-PARTY**

If you transfer an asset to another person (a third-party) to avoid a charge prior to the financial assessment, the third party may be liable to pay the local authority the difference between what you would have been charged and what you were charged at the time of the assessment.

However, a third-party is not liable to pay anything exceeding the benefit they received from the transfer of the asset. If you transfer funds to more than one third-party, each is liable to pay the local authority the difference between what it would have charged or did charge you for receiving care, in proportion to the amount they received.

## **LOCAL AUTHORITY RECOVERY OF DEBT**

If a local authority decides you have deprived yourself of capital or income and you do not pay the amount of charges they expect you to make, you may end up owing them money.

As a first port of call, a local authority must offer you the option of a deferred payment agreement (DPA), if possible.

They can only make an application to the County Court if you have refused this option, or you do not meet the DPA eligibility criteria.

## **WHAT IF I DISAGREE WITH THE LOCAL AUTHORITY'S DECISION?**

If you disagree with your local authority's decision about deprivation of assets, you can challenge it using the formal complaints procedure.

Remind the local authority that they must show that you were:

1. significantly motivated by avoiding care costs
2. you knew you'd need care and support at the time you got rid of your assets
3. you were expecting to have to contribute towards the cost of your care.

The local authority must base its decision on facts and let you submit relevant evidence to support your account. Be as clear and specific as you can when you're explaining why you may have given away your assets.

If you're not satisfied with the outcome of your complaint, you can take your complaint to the Local Government and Social Care Ombudsman.

**Talk to our specialist team for further advice.**