

Nursing and Residential Care Home Fees

Protecting Your Home



Contact Us

Parking

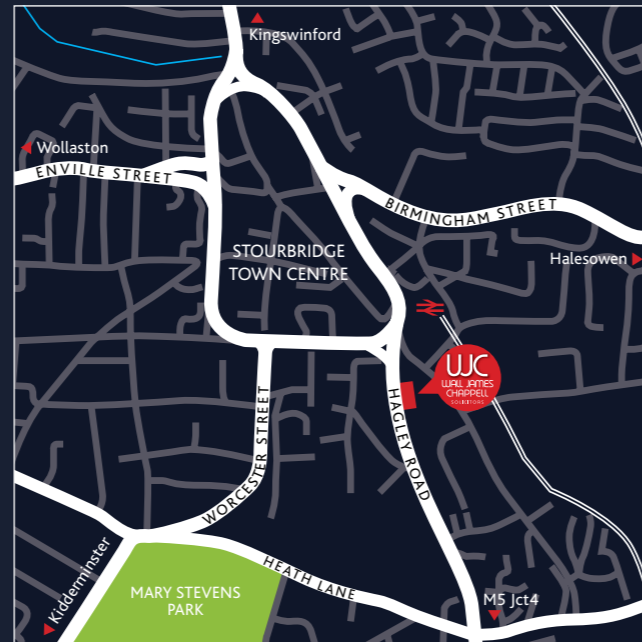
Car parking is available at the rear of the office for clients.

Access

The offices have been specifically designed to meet the needs of disabled clients.

Wall James Chappell
15-23 Hagley Road
Stourbridge
West Midlands
DY8 1QW

DX: 710678 Stourbridge
Telephone: 01384 371 622
Fax: 01384 374057
Email: post@wjclaw.co.uk
www.wjclaw.co.uk



There is an increasing concern about the cost of Nursing and Residential Care Home fees and who funds the cost. For many people their house is their main asset which they wish to leave as an inheritance to their family and not use to pay Home fees in their later years.

What power do the local authorities have?

If after assessment, the Local Authority's Social Services Department decide that you have a need for community care, then that Local Authority is responsible for providing it. You will undergo a financial assessment to ascertain your ability to pay the standard charge of that care. In this assessment, the Local Authority looks at your income and capital. Income is always taken into account as is a certain amount of your capital.

Your property is usually treated as capital and therefore, even if you have few other assets apart from your house, you could be deemed able to pay for your Home fees as a result of owning your own property. The Local Authority can insist that your property is sold and the proceeds of sale used to pay fees.

There are a few occasions when your property will not be included in your financial assessment, for example, where it remains occupied by a partner or a relative who is aged 60 or over or a younger relative who is incapacitated.

The Government is proposing to introduce new rules in 2017 which aim to increase the means-tested threshold before an individual has to pay for their own care and also place a cap on the amount an person should pay during their lifetime for the 'care' element of any nursing or residential care home costs. However, the precise details of the new rules are not yet known and it is expected that many people will still have to pay for their own care and even sell their home to fund these costs.

Can I give away my house?

If you dispose of capital prior to admission to a Home and the Local Authority believes that one of the main intentions behind the disposal was to deliberately deprive it of an asset with which to pay future Home fees, you will be treated as if you still own the property. The Local Authority will then seek to recover the standard charge from you or from the persons to whom you transferred the property. The Local Authority can investigate any disposal of capital regardless of how many years it was prior to admission to a Home.



Is it worth trying to give away my house?

For the above reasons, giving away your home may not be successful and there are drawbacks to giving away your property :-

- 1 Capital Gains Tax** - Capital Gains Tax is charged on the gain on a disposal of capital at the rates at which the owner of the capital pays income tax. The gain is calculated as the net sale proceeds less the original purchase price (or March 1982 value if purchased prior to that date).
- 2** Parents are often unwilling to gift major assets to their children where there is a possibility of the child attempting to sell the house from under their parents, a child becoming bankrupt, dying or getting divorced.

How can my house be safeguarded?

There are two possible ways of trying to safeguard your house.

A Gift of house

If you do wish to give away your house, then we would not recommend that it is given directly to an individual because of the risks set out above. Instead, it should be given to a trust. The trust would protect you as it would state that you could live in the house for as long as you wished without paying any rent but paying all of the usual outgoings. Only when you had died, or could no longer live in the house, would your children or other beneficiaries have an interest in the trust. Using a trust also means that if the house is sold when you are living there or within a period thereafter a Capital Gains Tax exemption is available. However, it is impossible to say what the risks are of **(a)** the Local Authority finding out about the gift and **(b)** the Local Authority taking any action in respect of the gift.

B Planning through your Wills

This is the preferred option and we recommend the use of a trust in your Will(s). We believe that where a couple own their house, it is possible to safeguard one half of it from the Local Authority. The steps are as follows:-

- 1** Ensure that husband and wife own the house jointly as tenants in common. This means that each owns half of the house and can dispose of their half as they wish. If they own the house as joint tenants, on the death of the first joint tenant his/her share automatically passes to the survivor. This can be achieved by a simple deed.
- 2** In both Wills provide that on the first death the deceased's half of the house will pass to a discretionary trust. The beneficiaries will include the spouse who should be permitted by the Trustees to occupy the trust's half of the property.

In the event of the survivor going into a Home the Local Authority can only treat half of the property as forming part of that person's capital. Although the survivor was occupying the other half, this was at the Trustees' discretion and not as of right. It cannot be claimed that the survivor has given half of the house to a trust as it was not theirs to give but the deceased spouse's. Therefore the Local Authority should have no claim over one half of the property.

If you would like further information or to discuss this further please contact either **Susannah Griffiths** or **James Rousell** at **Wall James Chappell**.