

# Giving away land & property

## When thinking about giving homes or other property to children or relatives, some important issues need to be considered.

- It is possible that children could die before parents. Parents may then find themselves living in a home belonging to someone other than their children.
- In the event of the divorce or bankruptcy of a son or daughter, the home could pass to an ex-spouse who may not be sympathetic towards the parents, or to a trustee in bankruptcy whose only concern would be to collect the value of the bankrupt's assets.
- Because of these potential problems, it is customary for children to grant to parents a licence to occupy the home for the rest of their lives, free of any payment. However, by safeguarding themselves and reserving an interest in the home in this way, the parents will not avoid Inheritance Tax on the gift.
- As long as the home is owner-occupied, it is free from any possible liability for Capital Gains Tax, however much the value increases. This exemption may not be available if children own, but do not occupy. When a sale eventually takes place, part of the proceeds may be lost in tax.
- Certain technicalities under bankruptcy legislation can have an impact in some circumstances. If the children sell the home within five years of it being given to them, a purchaser may require bankruptcy indemnity insurance. Current premiums can be around 0.5 per cent of the value of the home. If there is any likelihood of a sale within five years then this extra cost should be taken into account.
- As they become older, parents may wish to move to a smaller property. It is worth bearing in mind that, having given away their home, they cannot insist that the money from its sale is used to buy them another property. Close family will normally be co-operative but there is always the risk that you may be dealing with somebody other than the children.
- The transfer of your home is unlikely to be effective in avoiding the cost of residential care if it ever became necessary.

## Advice

We handle all aspects of wills, trusts and inheritance tax planning. Our expert and experienced lawyers, who are Legal 500-recommended, are easy to talk to and give clear and straightforward advice.

## Contact

Please contact the lead partner in our wills, probate and trusts team.

**Jenifer Gillman** [jenifer.gillman@willans.co.uk](mailto:jenifer.gillman@willans.co.uk)

**Willans LLP** | solicitors  
28 Imperial Square, Cheltenham  
Gloucestershire GL50 1RH

01242 514000  
[www.willans.co.uk](http://www.willans.co.uk)

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